Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

- *versus* -

TENG MONER *y* ADAM,
Accused-Appellant.

G.R. No. 202206

Present:

SERENO,* *CJ.*,
LEONARDO-DE CASTRO,** *J.*,
Acting Chairperson,
DEL CASTILLO,
PERLAS-BERNABE,*** and
TIJAM, *JJ.*

Promulgated:

MAR 05 2018

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DECISION

LEONARDO-DE CASTRO, *J.*:

This is an appeal of the Decision[1] dated July 27, 2011 of the Court of Appeals in CA-G.R. CR-H.C. No. 04399 entitled, *People of the Philippines v. Teng Moner y Adam*, which affirmed the Joint Decision[2] dated August 4, 2009 of the Regional Trial Court (RTC) of Quezon City, Branch 95 in Criminal Case Nos. Q-05-133982 and Q-05-133983. Anent Criminal Case No. Q-05-133982, the trial court found appellant Teng Moner *y* Adam (Moner) guilty beyond reasonable doubt of violating Section 5, Article II (sale of dangerous drugs) of Republic Act No. 9165 otherwise known as the Comprehensive Dangerous Drugs Act of 2002. In the same judgment, Moner and his co-accused were acquitted of the charge of violating Section 11, Article II (possession of dangerous drugs) of the same statute which was the subject of Criminal Case No. Q-05-133983.

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* On leave.
** Per Special Order No. 2540 dated February 28, 2018.
*** Per Raffle dated February 26, 2018.
1 *Rollo*, pp. 2-20; penned by Associate Justice Priscilla J. Baltazar-Padilla with Associate Justices Fernanda Lampas Peralta and Agnes Reyes-Carpio concurring.
2 CA *rollo*, pp. 73-92; penned by Presiding Judge Henri Jean-Paul B. Inting.

The crime of which Moner was convicted is described in the Information dated April 25, 2005, as follows:

> That on or about the 23rd day of April, 2005, in Quezon City, Philippines, the said accused, not being authorized by law to sell, dispense, deliver, transport or distribute any dangerous drug, did then and there, willfully and unlawfully sell, dispense, deliver, transport, distribute or act as broker in the said transaction, three point ninety-one (3.91) grams of methylamphetamine hydrochloride, a dangerous drug.[3]

Subsequently, on May 16, 2005, Moner pleaded "NOT GUILTY" to the aforementioned charge of illegal sale of dangerous drugs upon his arraignment.[4]

In its assailed Decision, the Court of Appeals presented the factual milieu of this case in this manner:

> To establish the guilt of accused-appellant, the prosecution presented three (3) witnesses namely: PO2 Joachim Panopio, PO3 Junnifer Tuldanes and PO3 Edwin Lirio.
>
> The prosecution's evidence tends to establish the following facts:
>
> On April 23, 2005, the police operatives of Las Piñas Police Station Anti-Illegal Drugs Special Operation Task Force (SAIDSOTF) had arrested a certain Joel Taudil for possession of illegal drugs. Upon investigation, they gathered from Taudil that the source of the illegal drugs was Teng Moner (herein accused-appellant) who hails from Tandang Sora, Quezon City.
>
> As per this information, Police Chief Inspector Jonathan Cabal formed a team that would conduct a buy-bust operation for the apprehension of accused-appellant. The team was composed of himself, SPO4 Arnold Alabastro, SPO1 Warlie Hermo, PO3 Junnifer Tuldanes, PO3 Edwin Lirio, PO2 Rodel Ordinaryo, PO1 Erwin Sabbun and PO2 Joachim Panopio. The marked and boodle money were given to PO2 Panopio who acted as the poseur-buyer.
>
> Before proceeding with the buy-bust operation, the team prepared the pre-operation report addressed to the Philippine Drug Enforcement Agency (PDEA), the authority to operate outside their jurisdiction and the coordination paper. Thereafter, they proceeded to the Central Police District Office (CPDO), Camp Karingal, Quezon City for proper coordination. Thereafter, the team together with Taudil and a CPD-DIID personnel proceeded [to] No. 26 Varsity Lane, Barangay Culiat, Tandang Sora, Quezon City. Upon reaching the place they made a surveillance and assumed their respective positions.
>
> At the target area, PO2 Panopio and Taudil went to accused-appellant's house. While outside the gate, Taudil summoned accused-appellant and the latter came out after a few minutes. The two men talked with each other in the Muslim dialect. Taudil introduced PO2 Panopio as

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3 Records, p. 2.

4 Id. at 35-36.

his friend to accused-appellant and told him that PO2 Panopio was interested to buy *shabu*. PO2 Panopio asked for the price of five (5) grams of *shabu*. Accused-appellant replied that the same would cost him ₱8,000.00 and asked him if he has the money. When PO2 Panopio confirmed that he has the money with him, accused-appellant asked them to wait and he went inside the house. When he returned after a few minutes, he handed a plastic sachet containing a substance suspected as *shabu* to PO2 Panopio who in turn gave him the marked and boodle money. Accused-appellant was about to count the money when PO2 Panopio gave the pre-arranged signal to his team and introduced himself as [a] police officer.

Accused-appellant resisted arrest and ran inside the house but PO2 Panopio was able to catch up with him. The other members of the team proceeded inside the house and they saw the other accused gather[ed] around a table re-packing *shabu*. PO3 Lirio confiscated the items from them and placed the same inside a plastic bag.

After accused-appellant and his co-accused were arrested, the team proceeded to the Las Piñas City Police Station. The items confiscated from them were turned over by PO2 Panopio to PO3 Dalagdagan who marked them in the presence of the police operatives, accused-appellant and his co-accused. PO3 Dalagdagan prepared the corresponding inventory of the confiscated items. The specimens were then brought to the police crime laboratory for testing. The specimens yielded positive to the test for methylamphetamine hydrochloride or *shabu*.

Consequently, a case for Violation of Section 5, Article II of R.A. 9165 was filed against accused-appellant and another for Violation of Section 11, Article II of R.A. 9165 against him and his co-accused.

In refutation of the prosecution's version, the defense presented four (4) witnesses, to wit: Judie Durado, Fatima Macabangen, accused-appellant and Richard Pascual.

It is the contention of the defense that on April 23, 2005, accused-appellant and his co-accused in Criminal Case No. Q-05-133983 were at the house located along No. 26 Varsity Lane, Philam, Tandang Sora, Quezon City to prepare for the wedding of Fatima Macabangen and Abubakar Usman to be held the following day. While they were inside the house, several armed persons wearing civilian clothes entered and announced that they were police officers. They searched the whole house and gathered all of them in the living room.

The police officer who was positioned behind accused-appellant and Abubakar dropped a plastic sachet. The former asked accused-appellant and Abubakar who owns the plastic sachet. When accused-appellant denied its ownership, the police officer slapped him and accused him of being a liar. Thereafter, they were all frisked and handcuffed and were brought outside the house. Their personal effects and belongings were confiscated by the police officers. Then they boarded a jeepney and were brought to [the] Las Piñas Police Station.

Upon their arrival, they were investigated. A police officer asked them to call up anybody who can help them because they only needed money for their release. Judie Dorado called up [his] mother. They saw the

other items allegedly confiscated from them only at the police station. At around 10:00 o'clock in the evening, they were brought to Camp Crame, Quezon City. From there, they went to Makati for drug testing and were returned to Las Piñas Police Station.

Subsequently, cases for Violation of R.A. No. 9165 were filed against them.[5]

After receiving the evidence for both sides, the trial court convicted Moner on the charge of selling *shabu* while, at the same time, acquitting him and his co-accused of the charge of possession of illegal drugs. The dispositive portion of the August 4, 2009 Joint Decision of the trial court reads:

WHEREFORE, the Court renders its Joint Decision as follows:

1. In Criminal Case No. Q-05-133982:

The Court finds accused TENG MONER Y ADAM "GUILTY" beyond reasonable doubt for violation of Section 5, Article II of R.A. 9165 or illegal selling of three point ninety-one (3.91) grams of methylamphetamine hydrochloride, a dangerous drug and he is hereby sentenced to suffer the penalty of LIFE IMPRISONMENT and to pay a FINE of FIVE HUNDRED THOUSAND PESOS (Php500,000.00).

2. In Criminal Case No. Q-05-133983:

The Court finds accused TENG MONER Y ADAM, JUDIE DURADO Y MACABANGEN, FATIMA MACABANGEN Y NUÑEZ, ABUBAKAR USMAN Y MASTORA, GUIAMIL ABU Y JUANITEZ, NORODIN USMAN Y MASTORA, RICHARD PASCUAL Y TANGALIN and AMINA USMAN-MONER "NOT GUILTY" for violation of Section 11, Art. II of R.A. 9165 considering that the prosecution failed to prove their guilt beyond reasonable doubt.

The pieces of evidence subject matter of Crim. Case No. Q-05-133983 are hereby ordered to be safely delivered to the Philippine Drug Enforcement Agency for proper disposition.[6]

As can be expected, Moner elevated his case to the Court of Appeals which, unfortunately for him, ruled to affirm the findings of the trial court and dispositively held:

WHEREFORE, the appealed Decision dated August 4, 2009 of the Regional Trial Court, Branch 95, Quezon City in Criminal Case No. Q-05-133982 finding accused-appellant guilty beyond reasonable doubt is hereby AFFIRMED.[7]

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5 *Rollo*, pp. 6-9.
6 CA *rollo*, p. 92.
7 *Rollo*, p. 20.

Hence, Moner interposes this appeal wherein he reiterates the same errors on the part of the trial court contained in his Brief filed with the Court of Appeals, to wit:

> A. THE COURT A QUO SERIOUSLY ERRED WHEN IT ISSUED ITS DECISION DATED AUGUST 4, 2009 FINDING THE ACCUSED-APPELLANT MONER GUILTY BEYOND REASONABLE DOUBT OF VIOLATING SECTION 5, ARTICLE II OF R.A. 9165, WHEN THE TESTIMONIES OF THE THREE (3) PROSECUTION WITNESSES (PO2 JOACHIM PANOPIO, PO3 JUNNIFER TULDANES, AND PO3 EDWIN LIRIO) ARE HIGHLY INCREDIBLE AND UNBELIEVABLE TO PROVE THE ALLEGED BUY-BUST.
>
> B. THE COURT A QUO SERIOUSLY ERRED IN ITS DECISION WHEN IT RELIED SOLELY ON THE PERJURED TESTIMONIES OF THE PROSECUTION WITNESSES POLICE OFFICERS WHICH ARE FULL OF INCONSISTENCIES.
>
> C. THE COURT A QUO SERIOUSLY ERRED IN ISSUING THE ASSAILED DECISION WHEN IT FAILED TO GIVE CREDENCE TO THE TESTIMONIES OF THE DEFENSE WITNESSES WHO CLEARLY TESTIFIED THAT THERE WAS REALLY NO BUY-BUST AND THAT APPELLANT MONER WAS NOT SELLING ANY PROHIBITED DRUGS.
>
> D. THE COURT SERIOUSLY ERRED WHEN IT ISSUED THE ASSAILED DECISION DESPITE THE FACT THAT THE PROSECUTION WITNESSES FAILED TO COMPLY WITH THE MANDATORY PROVISION OF SEC. 19 OF R.A. NO. 9165, ON THE MATTER OF PHYSICAL INVENTORY, AND PICTURE TAKING OF THE EVIDENCE ALLEGEDLY SEIZED FROM THE ACCUSED, AS WELL AS THE PROVISION OF SECTION 86 THEREOF.[8]

In sum, Moner maintains that the prosecution failed to discharge its burden of proof to sustain his conviction for the charge of sale of dangerous drugs. He highlights the fact that the prosecution failed to present in court the informant who pointed to him as a supplier of *shabu*. He also stresses that the buy-bust operation was conducted without proper coordination with the Philippine Drug Enforcement Agency (PDEA). Likewise, he derides the testimonies of the prosecution witnesses as inconsistent, incredible and unworthy of belief. Most importantly, he underscores the failure of the arresting officers to comply with the statutorily mandated procedure for the handling and custody of the dangerous drugs allegedly seized from him.

The appeal is without merit.

For a successful prosecution of an offense of illegal sale of dangerous drugs, the following essential elements must be proven: (1) that the transaction or sale took place; (2) that the *corpus delicti* or the illicit drug was presented as evidence; and (3) that the buyer and seller were identified.[9]

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8 CA *rollo*, p. 110.

9 *Ampatuan v. People*, 667 Phil. 747, 755 (2011).

A perusal of the records of this case would reveal that the aforementioned elements were established by the prosecution. The illegal drugs and the marked money were presented and identified in court. More importantly, Police Officer (PO) 2 Joachim Panopio (PO2 Panopio), who acted as poseur-buyer, positively identified Moner as the seller of the *shabu* to him for a consideration of ₱8,000.00.

With regard to Moner's contention that the prosecution's failure to present the informant in court diminishes the case against him, we reiterate our pronouncement on this matter in the recent case of *People v. Lafaran*[10]:

> It has oft been held that the presentation of an informant as witness is not regarded as indispensable to the success of a prosecution of a drug-dealing accused. As a rule, the informant is not presented in court for security reasons, in view of the need to protect the informant from the retaliation of the culprit arrested through his efforts. Thereby, the confidentiality of the informant's identity is protected in deference to his invaluable services to law enforcement. Only when the testimony of the informant is considered absolutely essential in obtaining the conviction of the culprit should the need to protect his security be disregarded. In the present case, as the buy-bust operation was duly witnessed by SPO2 Aro and PO3 Pera, their testimonies can take the place of that of the poseur-buyer.

Thus, we concur with the appellate court's finding that there is no need to present the informant because PO2 Panopio, who acted as the poseur-buyer, had testified in court. Furthermore, the other members of the buy-bust team, namely PO3 Junnifer Tuldanes (PO3 Tuldanes) and PO3 Edwin Lirio (PO3 Lirio), gave clear and credible testimonies with regard to the criminal transaction that was consummated by appellant and PO2 Panopio.

In addition, we rule that inconsistencies in the testimonies of the prosecution witnesses that were pointed out by Moner consist merely of minor variances that do not deviate from the main narrative which is the fact that Moner sold illegal drugs to a poseur-buyer. It has been held, time and again, that minor inconsistencies and contradictions in the declarations of witnesses do not destroy the witnesses' credibility but even enhance their truthfulness as they erase any suspicion of a rehearsed testimony.[11] It bears stressing, too, that the determination by the trial court of the credibility of witnesses, when affirmed by the appellate court, is accorded full weight and credit as well as great respect, if not conclusive effect.[12]

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10 771 Phil. 311, 326-327 (2015).
11 *People v. Mamalumpon*, 767 Phil. 845, 855 (2015).
12 *People v. Castro*, 711 Phil. 662, 673 (2013).

Lastly, we can give no credence to Moner's contention that the prosecution failed to prove an unbroken chain of custody in consonance with the requirements of law.

To ensure that the drug specimen presented in court as evidence against the accused is the same material seized from him or that, at the very least, a dangerous drug was actually taken from his possession, we have adopted the chain of custody rule. The Dangerous Drugs Board (DDB) has expressly defined chain of custody involving dangerous drugs and other substances in the following terms in Section 1(b) of DDB Regulation No. 1, Series of 2002:

> b. "Chain of Custody" means 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. Such record of movements and custody of seized item shall include the identity and signature of the person who held temporary custody of the seized item, the date and time when such transfer of custody were made in the course of safekeeping and use in court as evidence, and the final disposition[.]

In relation to this, Section 21 of Republic Act No. 9165 pertinently provides the following:

> 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[.]

Furthermore, Section 21(a) of the Implementing Rules and Regulations (IRR) of Republic Act No. 9165 relevantly 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[.]** (Emphasis supplied.)

We have consistently ruled that noncompliance with the requirements of Section 21 of Republic Act No. 9165 will not necessarily render the illegal drugs seized or confiscated in a buy-bust operation inadmissible. Strict compliance with the letter of Section 21 is not required if there is a clear showing that the integrity and evidentiary value of the seized illegal drugs have been preserved, *i.e.*, the illegal drugs being offered in court as evidence is, without a specter of doubt, the very same item recovered in the buy-bust operation.[13]

With regard to the foregoing, Moner asserts that he should be acquitted of the criminal charges levelled against him specifically because of the following serious lapses in procedure committed by the apprehending officers: (a) the physical inventory was not conducted at the place where the seizure was made; (b) the seized item was not photographed at the place of seizure; and (c) there was no physical inventory and photograph of the seized item in the presence of the accused, or his 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.

The aforementioned concerns can be squarely addressed by a careful and assiduous review of the records of this case accompanied by a liberal application and understanding of relevant jurisprudence in support thereof. Both object and testimonial evidence demonstrate that the apprehending officers were able to mark the dangerous drugs seized and to prepare a physical inventory of the same at the Las Piñas Police Station which was the place where Moner and his co-accused were brought for processing. The following excerpts lifted from the transcript of the testimony of PO2 Panopio during trial confirm this fact:

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13 *People v. Cunanan*, 756 Phil. 40, 50 (2015).

Q Now, Mr. Witness, after your team recovered [the] evidence on top of the table inside the house, arrested those persons whom you identified a while ago **and also arrested Teng Moner recovered from him the buy-bust money, what happened next?**
A **We brought them to the police headquarters.**

Q In what headquarters did you bring the persons arrested?
A We brought them to Special Action... SAID-SOTF Las Piñas Police Station.

x x x x

Q Now, I would like to inform you that under Section 21 of the Republic Act 9165, the arresting officer immediately after the arrest of the accused or the person buy-bust for possession must prepare the inventory of seized evidence.
A Yes, sir.

Q What do you mean by "yes"?
A **We did prepare an inventory, sir.**

Q So, you are aware of that provision?
A I just forgot the Section 21, sir.

COURT: (to the witness)

Q You do not know that doing an inventory is a requirement under Section 21?
A Yes, your Honor.

PROS.: (to the witness)

Q Now, you said that you are aware of Section 21 an inventory must be made. Do you know whether your team complied with that provision of the law upon reaching the station?
A Yes, sir,

Q What do you mean by "yes"?
A We made an Inventory Report, sir.

Q Where is now that Inventory Report?
A It's with the documents I submitted earlier in court, sir.

x x x x

PROS: (to the Court)

This piece of document handed by the witness your Honor, the Inventory of Property Seized be marked as Exhibit "OOO".

COURT: (to the witness)

Q That is the original, Mr. Witness?
A Yes, your Honor.

x x x x

PROS.: (to the Court)

Q The signature of PO3 Rufino G. Dalagdagan under the heading "Received By:" be bracketed and be marked as Exhibit "OOO-1"; the list of the articles appearing [in] the body of Exhibit "OOO" be bracketed and be marked as Exhibit "OOO-2". **This Receipt of Property Turned-Over, your Honor, which states: "I, PO3 RUFINO G. DALAGDAGAN OF SAID-SOTF, LAS PIÑAS CITY POLICE STATION, SPD hereby acknowledge received (sic) the items/articles listed hereunder [from] PO2 JOACHIM P. PANOPIO"** and may we request, your honor that letters appearing on the top of the name TENG MONER ADAM, ET AL. (RTS) be marked as Exhibit "OOO-3".

PROS.: (to the witness)

Q **Where were you, Mr. Witness, when this Exhibit "OOO" was prepared?**
A **I was inside the office, sir.**

Q Who prepared this Exhibit "OOO"?
A PO3 Rufino Dalagdagan, sir.

Q These items listed [in] the body of marked as Exhibit "OOO", who made these items?
A I, myself, sir.

Q Now, showing to you this Exhibit marked as "OOO-3" particularly on [the] letters RPS appearing inside the parenthesis, who placed that entry (RPS)?
A Police Officer Dalagdagan, sir.

Q Where were you at the time when this (RPS) marked as Exhibit "OOO-3" was made?
A I was inside the office, sir.

Q **Where were those persons whom your team arrested when this evidence marked as Exhibit "OOO" was made?**
A **They were also inside the office, sir.**

x x x x

Q You said a while ago that in consideration with the buy-bust money, you received from the accused, Teng Moner, that plastic sachet containing shabu. **Upon reaching the station, what happened to the plastic sachet, subject matter of the buy-bust operation?**
A **I turned it over, sir.**

Q To whom?
A PO3 Dalagdagan, sir.

Q **And before you turned it over to the investigator, PO3 Dalagdagan, that shabu subject matter of the buy-bust operation, what did you do with it?**

A **He placed [the] markings on it, sir.**

Q So, you did not do anything on the shabu you bought from the accused when it was the investigator who made the markings on the shabu?
A Yes, sir.

Q And what were the markings placed by the investigator, PO3 Dalagdagan, when you turned over the shabu, subject matter of the buy-bust operation?
A He placed "TMA"... that's all I can recall, sir.

Q **Now, would you be able to identify that plastic sachet, subject matter of the buy-bust operation?**
A **Yes, sir.**

Q Showing to you several pieces of evidence placed inside the brown envelope. Kindly look at the same and pick from these several items that plastic sachet, subject matter of the buy-bust operation?
A (Witness picked from the bunch of evidence the plastic sachet which already marked as Exhibit "P" and he read [the] markings "TMAU1-23APR05".)

Q Now, you also stated a while ago that you were the one who personally recovered the buy-bust money used in the operation from the possession of the accused, Teng Moner. If the same would be shown to you, would you be able to identify it?
A Yes, sir.

x x x x

Q **Now, you also stated that the Request for Laboratory Examination was made by the investigator, Now, who delivered the plastic sachet subject matter of the buy-bust operation for laboratory examination?**
A **We did, sir.**[14] (Emphases supplied.)

Judging from the cited testimony, it is apparent that the apprehending officers were able to substantially comply with the requirements of the law regarding the custody of confiscated or seized dangerous drugs. When cross-examined by the defense counsel during trial about the reason behind the buy-bust team's noncompliance with standard procedure, PO3 Tuldanes, one of the apprehending officers, gave the following response:

ATTY. PALAD: (to witness)

Q Meaning you had no time to make the inventory right at the scene of the alleged buy-bust?
A Yes, sir, because we were immediately instructed to pull out from the area.

Q Was there any threat on your lives that you immediately pulled out from the said area?

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14 TSN, October 18, 2005, pp. 27-40.

A It was not our area – Area of Responsibility – so we just wanted to make sure, for security and immediately left, sir.

Q So this fear for security, you did not follow this photographing/inventory?
A We did not do that anymore, sir, because our security was at risk.[15]

Verily, the circumstances that the buy-bust team proceeded first to the Central Police District (CPD) Station, Camp Karingal in Quezon City and, from there, they were accompanied by a police officer from the CPD to the target location, aside from proving that it was a legitimate police operation, supported the existence of a security risk to the buy-bust team. These additional precautions taken by the buy-bust team underscored their unfamiliarity with the location of the operation and, in fact, corroborated the above-quoted testimony that the buy-bust team believed there was a threat to their security.

With regard to the accused's allegation that the buy-bust team failed to coordinate with the PDEA before proceeding with the operation that nabbed Moner, both the trial court and the Court of Appeals declare in unison that the requisite prior coordination with PDEA did happen. Likewise, our own review did not provide any reason for us to disbelieve said established fact.

To reiterate, noncompliance with the chain of custody rule is excusable as long as there exist justifiable grounds which prevented those tasked to follow the same from strictly conforming to the said directive. The preceding discussion clearly show that the apprehending officers in this case did not totally disregard prescribed procedure but, instead, demonstrated substantial compliance with what was required. It was likewise explained that the divergence in procedure was not arbitrary or whimsical but because the buy-bust team decided that they could not linger at the crime scene as it would unduly expose them to security risks since they were outside their area of responsibility.

Notably, in the recent case of *Palo v. People*,[16] we affirmed a conviction for illegal possession of dangerous drugs despite the fact that the seized illegal substance was only marked at the police station and that there was no physical inventory or photograph of the same:

> The fact that the apprehending officer marked the plastic sachet at the police station, and not at the place of seizure, did not compromise the integrity of the seized item. Jurisprudence has declared that "marking upon immediate confiscation" contemplates even marking done at the nearest police station or office of the apprehending team. Neither does the absence of a physical inventory nor the lack of photograph of the confiscated item renders the same inadmissible. What is of utmost importance is the preservation of the integrity and evidentiary value of the

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15 TSN, July 25, 2006, p. 64.
16 780 Phil. 681 (2016).

> seized items as these would be used in determining the guilt or innocence of the accused.[17]

With regard to the third breach of procedure highlighted by Moner, this Court cites *People v. Usman*[18] wherein we declared that the chain of custody is not established solely by compliance with the prescribed physical inventory and photographing of the seized drugs in the presence of the enumerated persons by law. In that case, the police officers who arrested and processed the accused did not perform the prescribed taking of photographs under the law but, nevertheless, the assailed conviction was upheld. The Court reasoned thus:

> [T]his Court has, in many cases, held that while the chain of custody should ideally be perfect, in reality it is not, "as it is almost always impossible to obtain an unbroken chain." The most important factor is the preservation of the integrity and the evidentiary value of the seized items as they will be used to determine the guilt or innocence of the accused. x x x.[19]

In the case at bar, the records indicate that the integrity and the evidentiary value of the seized items had been preserved despite the procedural infirmities that accompanied the process. On this score, we quote with approval the disquisition of the Court of Appeals:

> The record shows that upon the arrest of accused-appellant, the shabu and marked money were confiscated from him by PO2 Panopio. Accused-appellant was immediately brought to the Las Piñas Police Station where the items confiscated from him were turned-over by PO2 Panopio to PO3 Dalagdagan, the investigator-on-case. **The latter received the confiscated items and marked them in the presence of PO2 Panopio and accused-appellant. An inventory of the confiscated items was also made.**
>
> Thereafter, the request for laboratory examination was prepared by PO3 Dalagdagan and signed by P/C Insp. Jonathan A. Cabal. The specimen together with the request was brought to the PNP Crime Laboratory, Camp Crame, Quezon City by PO2 Panopio and the other police officers. There, it was received by PSI Michael S. Holada, who delivered the specimen and request for laboratory test to the forensic chemist PIS Maridel C. Rodis. After examination, the specimen submitted for testing proved positive for Methylamphetamine Hydrochloride, a dangerous drug. The result of the test was reduced to writing and signed by the forensic chemist. It was duly noted by P/Sr. Supt. Ricardo Cacholaver. It is worth stressing that the prosecution and defense had agreed to dispense with the testimony of the forensic chemist and stipulated among others that she could identify the documents and the specimens she examined.[20] (Emphases supplied and citations omitted.)

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17 Id. at 694-695.

18 753 Phil. 200 (2015).

19 Id. at 214.

20 *Rollo*, p. 18.

Anent Moner's allegation that the buy-bust team asked money from him and his former co-accused in exchange for their liberty, it must be emphasized that the said allegation only came to light when defense counsel asked appellant what happened when he and his former co-accused were brought to the Las Piñas Police Station.[21] Curiously, however, defense counsel did not confront any of the prosecution witnesses regarding the said accusation. More importantly, based on the record, no criminal or administrative case relating thereto was ever filed by Moner or any of his former co-accused against their alleged extortionists. Nevertheless, on this particular issue, we would like to reiterate our ruling that the defense of denial or frame-up, like alibi, has been invariably viewed by the courts with disfavor for it can just easily be concocted and is a common and standard defense ploy in most prosecution for violation of the Dangerous Drugs Act.[22]

At this juncture, it bears repeating that in cases involving violations of the Dangerous Drugs Act, credence is given to prosecution witnesses who are police officers, for they are presumed to have performed their duties in a regular manner, unless there is evidence to the contrary.[23] Admittedly, the buy-bust team did not follow certain aspects of procedure to the letter but this was excusable under the saving clause of the chain of custody rule and prevailing jurisprudence. As a consequence thereof, their arrest of Moner in the performance of their duty cannot be described as having been done so irregularly as to convince this Court to invalidate the credibility and belief bestowed by the trial court on the prosecution evidence. Accordingly, Moner must provide clear and convincing evidence to overturn the aforesaid presumption that the police officers regularly performed their duties but the records show that he has failed to do so. Absent any proof of mishandling, tampering or switching of evidence presented against him by the arresting officers and other authorities involved in the chain of custody, the presumption remains.

This is not the first time that this Court has been confronted with the question of whether or not to uphold the conviction of a person arrested for the illegal sale of dangerous drugs who had been positively identified by credible witnesses as the perpetrator of said crime but the manner by which the evidence of illegal drugs was handled did not strictly comply with the chain of custody rule. To reiterate past pronouncements, while ideally the procedure on the chain of custody should be perfect and unbroken, in reality, it is not as it is almost always impossible to obtain an unbroken chain.[24] Unfortunately, rigid obedience to procedure creates a scenario wherein the safeguards that we set to shield the innocent are likewise exploited by the guilty to escape rightful punishment. Realizing the inconvenient truth that no perfect chain of custody can ever be achieved, this Court has consistently

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21 TSN, June 4, 2008, p. 7.

22 *People v. Ygot*, G.R. No. 210715, July 18, 2016, 797 SCRA 87, 93.

23 *People v. Minanga*, 751 Phil. 240, 249 (2015).

24 *Ambre v. People*, 692 Phil. 681, 695 (2012).

held that the most important factor in the chain of custody rule is the preservation of the integrity and evidentiary value of the seized items.[25]

We find it apropos to highlight this Court's discussion in *Zalameda v. People,*[26] which was restated in the recent case of *Saraum v. People*[27]:

> We would like to add that noncompliance with Section 21 of said law, particularly the making of the inventory and the photographing of the drugs confiscated and/or seized, will not render the drugs inadmissible in evidence. Under Section 3 of Rule 128 of the Rules of Court, evidence is admissible when it is relevant to the issue and is *not excluded by the law or these rules.* For evidence to be inadmissible, there should be a law or rule which forbids its reception. If there is no such law or rule, the evidence must be admitted subject only to the evidentiary weight that will accorded it by the court x x x.
>
> We do not find any provision or statement in said law or in any rule that will bring about the non-admissibility of the confiscated and/or seized drugs due to noncompliance with Section 21 of Republic Act No. 9165. The issue therefore, if there is noncompliance with said section, is not of admissibility, but of weight – evidentiary merit or probative value – to be given the evidence. The weight to be given by the courts on said evidence depends on the circumstances obtaining in each case.

Stated differently, if the evidence of illegal drugs was not handled precisely in the manner prescribed by the chain of custody rule, the consequence relates not to inadmissibility that would automatically destroy the prosecution's case but rather to the weight of evidence presented for each particular case. In the case at bar, the trial court judge convicted Moner on the strength of the credibility of the prosecution's witnesses despite an imperfect chain of custody concerning the *corpus delicti.*

It should be noted that Section 21(a) of the IRR of Republic Act No. 9165 provides that:

> 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

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25 *Saraum v. People*, 779 Phil. 122, 133 (2016).

26 614 Phil. 710, 741-742 (2009), citing *People v. Del Monte*, 575 Phil. 577, 586 (2008).

27 Supra note 25 at 133.

> of the seized items and photograph the same in the presence of the accused or the persons from whom such items were confiscated and/or seized, or his/her representative or counsel, with an elected public official and a representative of the National Prosecution Service or the media who shall be required to sign the copies of the inventory and be given a copy thereof: *Provided,* That the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures: ***Provided, finally*, That noncompliance of these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures and custody over said items.** (Emphases supplied.)

The above-quoted provision recognizes that the credibility of the prosecution's witnesses and the admissibility of other evidence are well within the power of trial court judges to decide. Paragraph (5), Section 5, Article VIII of the 1987 Constitution vests upon the Supreme Court the following power, among others:

> (5) **Promulgate rules concerning the protection and enforcement of constitutional rights, pleading, practice, and procedure in all courts,** the admission to the practice of law, the Integrated Bar, and legal assistance to the underprivileged. Such rules shall provide a simplified and inexpensive procedure for the speedy disposition of cases, shall be uniform for all courts of the same grade, and shall not diminish, increase, or modify substantive rights. Rules of procedure of special courts and quasi-judicial bodies shall remain effective unless disapproved by the Supreme Court.

Jurisprudence explains the above-quoted constitutional provision in the following manner:

> Until the 1987 Constitution took effect, our two previous constitutions textualized a power sharing scheme between the legislature and this Court in the enactment of judicial rules. Thus, both the 1935 and the 1973 Constitutions vested on the Supreme Court the "power to promulgate rules concerning pleading, practice, and procedure in all courts, and the admission to the practice of law." However, these constitutions also granted to the legislature the concurrent power to "repeal, alter or supplement" such rules.
>
> **The 1987 Constitution textually altered the power-sharing scheme under the previous charters by deleting in Section 5(5) of Article VIII Congress' subsidiary and corrective power. This glaring and fundamental omission led the Court to observe in *Echegaray v. Secretary of Justice* that this Court's power to promulgate judicial rules "is no longer shared by this Court with Congress."**[28]

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[28] *Baguio Market Vendors Multi-Purpose Cooperative v. Cabato-Cortes*, 627 Phil. 543, 548-549 (2010).

The power to promulgate rules concerning pleading, practice and procedure in all courts is a traditional power of this Court.[29] This includes the power to promulgate the rules of evidence.

On the other hand, the Rules of Evidence are provided in the Rules of Court issued by the Supreme Court. However, the chain of custody rule is not found in the Rules of Court. Section 21 of Republic Act No. 9165 was passed by the legislative department and its implementing rules were promulgated by PDEA, in consultation with the Department of Justice (DOJ) and other agencies under and within the executive department.

In the United States, the chain of custody rule is followed by the federal courts using the provisions of the Federal Rules of Evidence. The Federal Court of Appeals applied this rule in *United States v. Ricco*[30] and held as follows:

> **The "chain of custody" rule is found in Fed.R.Evid. 901, which requires that the admission of an exhibit must be preceded by "evidence sufficient to support a finding that the matter in question is what its proponent claims." x x x.**
>
> x x x As we have pointed out, the "'chain of custody' is not an iron-clad requirement, and the fact of a 'missing link' does not prevent the admission of real evidence, so long as there is sufficient proof that the evidence is what it purports to be and has not been altered in any material respect." x x x.

According to Cornell University's online legal encyclopedia, "[r]ules of evidence are, as the name indicates, the rules by which a court determines what evidence is admissible at trial. In the U.S., federal courts follow the Federal Rules of Evidence, while state courts generally follow their own rules."[31] In the U.S. State of Alaska, for example, the "chain of custody" rule is found in Alaska Evidence Rule 901(a).[32]

Evidence is defined in Section 1 of Rule 128[33] as "the means, sanctioned by these rules, of **ascertaining in a judicial proceeding the truth respecting a matter of fact.**" Section 2 of the same Rule provides that "[t]he rules of evidence shall be the same in all courts and in all trials and hearings, except as otherwise provided by law or these rules."

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29 *Re: Petition for Recognition of the Exemption of the GSIS from Payment of Legal Fees*, 626 Phil. 93, 106 (2010).

30 52 F. 3d 58 – United States Court of Appeals, 4th Circuit 1995, citing United States v. Howard-Arias, 679 F.2d 363, 366 (4th Cir.1982).

31 Cornell University Law School Legal Information Institute. https://www.law.cornell.edu/wex/evidence. Last visited on March 1, 2017.

32 Evidence Rule 901(a) states that if the government offers physical evidence (or testimony describing physical evidence) in a criminal trial, and if that physical evidence "is of such a nature as not to be readily identifiable," or if the physical evidence is "susceptible to adulteration, contamination, modification, tampering, or other changes in form attributable to accident, carelessness, error or fraud," then the government must, as foundational matter, "demonstrate [to a] reasonable certainty that the evidence is x x x properly identified and free of the possible taints" identified in the rule.

33 Rules of Court.

Furthermore, the said Rule provides for the admissibility of evidence, and states that "[e]vidence is admissible when it is relevant to the issue and is not excluded by the law or these rules." The Rules of Admissibility provide that "[o]bjects as evidence are those addressed to the senses of the court. When an object is relevant to the fact in issue, it may be exhibited to, examined or viewed by the court."[34]

Under the doctrine of separation of powers, it is important to distinguish if a matter is a proper subject of the rules of evidence, which as shown above are promulgated by the Court, or it is a subject of substantive law, and should be passed by an act of Congress. The Court discussed this distinction in the early case of *Bustos v. Lucero*[35]:

> Substantive law creates substantive rights and the two terms in this respect may be said to be synonymous. Substantive rights is a term which includes those rights which one enjoys under the legal system prior to the disturbance of normal relations. (60 C. J., 980.) Substantive law is that part of the law which creates, defines and regulates rights, or which regulates the rights and duties which give rise to a cause of action; that part of the law which courts are established to administer; as opposed to adjective or remedial law, which prescribes the method of enforcing rights or obtains redress for their invasion. (36 C. J., 27; 52 C. J. S., 1026.)
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> **As applied to criminal law, substantive law is that which declares what acts are crimes and prescribes the punishment for committing them, as distinguished from the procedural law which provides or regulates the steps by which one who commits a crime is to be punished.** (22 C. J. S., 49.) Preliminary investigation is eminently and essentially remedial; it is the first step taken in a criminal prosecution.
>
> As a rule of evidence, section 11 of Rule 108 is also procedural. Evidence — which is "the mode and manner of proving the competent facts and circumstances on which a party relies to establish the fact in dispute in judicial proceedings" — is identified with and forms part of the method by which, in private law, rights are enforced and redress obtained, and, in criminal law, a law transgressor is punished. Criminal procedure refers to pleading, evidence and practice. (State *vs.* Capaci, 154 So., 419; 179 La., 462.) The entire rules of evidence have been incorporated into the Rules of Court. We can not tear down section 11 of Rule 108 on constitutional grounds without throwing out the whole code of evidence embodied in these Rules.
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> In Beazell *vs.* Ohio, 269 U. S., 167, 70 Law. ed., 216, the United States Supreme Court said:
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> > "Expressions are to be found in earlier judicial opinions to the effect that the constitutional limitation may be transgressed by alterations in the rules of evidence or procedure. See Calder *vs.* Bull, 3 Dall. 386, 390, 1 L. ed., 648, 650; Cummings *vs.* Missouri, 4 Wall. 277, 326, 18 L.

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34 Rules of Court, Rule 130, Section 1.

35 81 Phil. 640, 649-652 (1948).

> ed., 356, 364; Kring *vs.* Missouri, 107 U. S. 221, 228, 232, 27 L. ed., 507, 508, 510, 2 Sup. Ct. Rep., 443. And there may be procedural changes which operate to deny to the accused a defense available under the laws in force at the time of the commission of his offense, or which otherwise affect him in such a harsh and arbitrary manner as to fall within the constitutional prohibition. Kring *vs.* Missouri, 107 U. S., 221, 27 L. ed., 507, 2 Sup. Ct. Rep., 443; Thompson *vs.* Utah, 170 U. S., 343, 42 L. ed., 1061, 18 Sup. Ct. Rep., 620. But it is now well settled that statutory changes in the mode of trial or the rules of evidence, which do not deprive the accused of a defense and which operate only in a limited and unsubstantial manner to his disadvantage, are not prohibited. A statute which, after indictment, enlarges the class of persons who may be witnesses at the trial, by removing the disqualification of persons convicted of felony, is not an ex post facto law. Hopt *vs.* Utah, 110 U. S., 575, 28 L. ed., 263, 4 Sup. Ct. Rep., 202, 4 Am. Crim. Rep. 417. Nor is a statute which changes the rules of evidence after the indictment so as to render admissible against the accused evidence previously held inadmissible, Thompson *vs.* Missouri, 171 U. S., 380, 43 L. ed., 204, 18 Sup. Ct. Rep., 922; or which changes the place of trial, Gut *vs.* Minnesota, 9 Wall. 35, 19 L. ed., 573; or which abolishes a court for hearing criminal appeals, creating a new one in its stead. See Duncan *vs.* Missouri, 152 U. S., 377, 382, 38 L. ed., 485, 487, 14 Sup. Ct. Rep., 570."
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> x x x x
>
> The distinction between "remedy" and "substantive right" is incapable of exact definition. The difference is somewhat a question of degree. (Dexter *vs.* Edmands, 89 F., 467; Beazell *vs.* Ohio, *supra.*) It is difficult to draw a line in any particular case beyond which legislative power over remedy and procedure can pass without touching upon the substantive rights of parties affected, as it is impossible to fix that boundary by general condition. (State *vs.* Pavelick, 279 P., 1102.) This being so, it is inevitable that the Supreme Court in making rules should step on substantive rights, and the Constitution must be presumed to tolerate if not to expect such incursion as does not affect the accused in a harsh and arbitrary manner or deprive him of a defense, but operates only in a limited and unsubstantial manner to his disadvantage. For the Court's power is not merely to compile, revise or codify the rules of procedure existing at the time of the Constitution's approval. This power is "to promulgate rules concerning pleading, practice, and procedure in all courts," which is a power to adopt a general, complete and comprehensive system of procedure, adding new and different rules without regard to their source and discarding old ones.

To emphasize, the distinction in criminal law is this: substantive law is that which declares what acts are crimes and prescribes the punishment for committing them, as distinguished from the procedural law which provides or regulates the steps by which one who commits a crime is to be punished.[36]

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[36] 22 C.J.S. 49.

Based on the above, it may be gleaned that the chain of custody rule is a matter of evidence and a rule of procedure. It is therefore the Court who has the last say regarding the appreciation of evidence. Relevant portions of decisions elucidating on the chain of custody rule are quoted below:

Saraum v. People[37]:

> **The chain of custody rule requires the identification of the persons who handled the confiscated items for the purpose of duly monitoring the authorized movements of the illegal drugs and/or drug paraphernalia from the time they were seized from the accused until the time they are presented in court.** x x x. (Citation omitted.)

Mallillin v. People[38]:

> 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. (Citations omitted.)

These are matters well within the powers of courts to appreciate and rule upon, and so, when the courts find appropriate, substantial compliance with the chain of custody rule as long as the integrity and evidentiary value of the seized items have been preserved may warrant the conviction of the accused. This is the rationale, grounded on the constitutional power of the

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37 Supra note 25 at 132.

38 576 Phil. 576, 586-587 (2008).

Court, to pass upon the credibility and admissibility of evidence that underlies the proviso in Section 21(a) of the IRR of Republic Act No. 9165.

To conclude, this Court has consistently espoused the time-honored doctrine that where the issue is one of credibility of witnesses, the findings of the trial court are not to be disturbed unless the consideration of certain facts of substance and value, which have been plainly overlooked, might affect the result of the case.[39] We do not believe that the explainable deviations to the chain of custody rule demonstrated by the police officers involved in this case are reason enough to overturn the findings of the trial court judge, who personally observed and weighed the testimony of the witnesses during trial and examined the evidence submitted by both parties.

In light of the foregoing, we are compelled to dismiss the present appeal and affirm the conviction of Moner for the crime of illegal sale of dangerous drugs.

WHEREFORE, premises considered, the present appeal is **DISMISSED** for lack of merit. The assailed Decision dated July 27, 2011 of the Court of Appeals in CA-G.R. CR-H.C. No. 04399 is **AFFIRMED**.

SO ORDERED.

TERESITA J. LEONARDO-DE CASTRO
Associate Justice
Acting Chairperson, First Division

WE CONCUR:

On leave
MARIA LOURDES P. A. SERENO
Chief Justice
Chairperson

39 *People v. Mercado*, 755 Phil. 863, 874 (2015).

Please see dissenting opinion

MARIANO C. DEL CASTILLO
Associate Justice

ESTELA M. PERLAS-BERNABE
Associate Justice

NOEL GIMENEZ TIJAM
Associate Justice

ATTESTATION

I attest 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.

TERESITA J. LEONARDO-DE CASTRO
Associate Justice
Acting Chairperson, First Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Acting Chairperson's Attestation, 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
Acting Chief Justice

G.R. No. 202206 – PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee*, ***v.*** **TENG MONER *y* ADAM,** *Accused-Appellant.*

Promulgated:

MAR 05 2018

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DISSENTING OPINION

PERLAS-BERNABE, *J.*:

I respectfully submit my dissent to the *ponencia* which affirmed the conviction of accused-appellant Teng Moner *y* Adam for violation of Section 5, Article II of Republic Act No. (RA) 9165,[1] otherwise known as the "Comprehensive Dangerous Drugs Act of 2002." As will be explained hereunder, my dissent is centered on the police officers' unjustified deviation from the chain of custody procedure as required by RA 9165, as amended.

Under Section 21, Article II of RA 9165, prior to its amendment by RA 10640,[2] the physical inventory and photography of the seized items should be conducted in the presence of the accused or the person from whom the items were seized, or his representative or counsel, with an elected public official, and representatives from the media and the Department of Justice (DOJ), who shall be required to sign the copies of the inventory. The purpose of this rule is to ensure the establishment of the chain of custody and remove any suspicion of switching, planting, or contamination of evidence which could considerably affect a case.[3] Non-compliance with this requirement, however, would not *ipso facto* render the seizure and custody over the items as void and invalid, provided that the prosecution satisfactorily proves that: (*a*) there is justifiable ground for non-compliance; **and** (*b*) the integrity and evidentiary value of the seized items are properly preserved.[4]

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1 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.

2 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. The crime subject of this case was allegedly committed on April 23, 2005, prior to the enactment of RA 10640.

3 See *People v. Mendoza*, 736 Phil. 749, 764 (2014).

4 *People v. Goco*, G.R. No. 219584, October 17, 2016, 806 SCRA 240, 252. See also *People v. Almorfe*, 631 Phil. 51, 60 (2010).

Case law states that in determining whether or not there was indeed a justifiable reason for the deviation in the aforesaid rule on witnesses, 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."[5] Verily, mere statements of unavailability, absent actual serious attempts to contact the required witnesses, are unacceptable as justified grounds for non-compliance.

In this case, while the police officers indeed conducted an inventory of the seized items as evidenced by the Receipt of Property Turned Over,[6] a review of such document readily shows that no elected public official, representative from the DOJ, or representative from the media signed the same; thus, indicating that such required witnesses were absent during the conduct of inventory. The foregoing facts were confirmed by no less than the members of the buy-bust team who, unfortunately, offered no explanation for the non-compliance with the rule on required witnesses.[7] To reiterate, the arresting officers are compelled not only to state reasons for their non-compliance, but must in fact, also convince the Court that they exerted earnest efforts to comply with the mandated procedure, and that under the given circumstance, their actions were reasonable. Thus, for failure of the prosecution to provide justifiable grounds or show that special circumstances exist which would excuse their transgression, I respectfully submit that the integrity and evidentiary value of the items purportedly seized from the accused-appellant have been compromised. To stress, the chain of custody procedure enshrined in Section 21, Article II of RA 9165 is a matter of substantive law, and cannot be brushed aside as a simple procedural technicality.[8]

In the recent case of *People v. Miranda*,[9] the Court held that "as the requirements are clearly set forth in the law, then the State retains the **positive duty** to account for any lapses in the chain of custody of the drugs/items seized from the accused, regardless of whether or not the defense raises the same in the proceedings *a quo*; otherwise, it risks the possibility of having a conviction overturned on grounds that go into the evidence's integrity and evidentiary value, albeit the same are raised only for the first time on appeal, or even not raised, become apparent upon further review."

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5 *People v. Umipang*, 686 Phil. 1024, 1053 (2012).

6 See records, p. 100.

7 See Testimony of Police Officers (PO) 3 Edwin Lirio, TSN, September 19, 2006, pp. 65-66; Testimony of PO2 Joachim Panopio, TSN, February 14, 2006, pp. 10-19; Testimony of PO2 Joachim Panopio, TSN, October 18, 2005, pp. 29-33.

8 *Gamboa v. People*, G.R. No. 220333, November 14, 2016, 808 SCRA 624, 637.

9 See G.R. No. 229671, January 31, 2018.

ACCORDINGLY, in view of the above-stated reasons, I vote to **GRANT** the appeal, and consequently, **ACQUIT** accused-appellant Teng Moner *y* Adam.

ESTELA M. PERLAS-BERNABE
Associate Justice