



Republic of the Philippines
 Supreme Court
 Manila

SUPREME COURT OF THE PHILIPPINES
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PEOPLE OF THE PHILIPPINES,
 Plaintiff-Appellee,

G.R. No. 231989

Present:

LEONARDO-DE CASTRO, C.J.,
 CARPIO,
 PERALTA,
 BERSAMIN,
 DEL CASTILLO,*
 PERLAS-BERNABE,
 LEONEN,
 JARDELEZA,**
 CAGUIOA,
 TIJAM,
 REYES, A., JR.,
 GISMUNDO, and
 REYES, J. JR., JJ.

- versus -

ROMY LIM y MIRANDA,
 Accused-Appellant.

Promulgated:

September 4, 2018

X-----X

DECISION

PERALTA, J.:

On appeal is the February 23, 2017 Decision¹ of the Court of Appeals (CA) in CA-G.R. CR HC No. 01280-MIN, which affirmed the September 24, 2013 Decision² of Regional Trial Court (RTC), Branch 25, Cagayan de Oro City, in Criminal Case Nos. 2010-1073 and 2010-1074, finding

* On wellness leave.

** No part.

¹ Penned by Associate Justice Ronaldo B. Martin, with Associate Justices Romulo V. Borja and Oscar V. Badelles, concurring; *rollo*, pp. 3-19; CA *rollo*, pp. 86-102.

² Records, pp. 117-125; CA *rollo*, pp. 32-40.

accused-appellant Romy Lim y Miranda (*Lim*) guilty of violating Sections 11 and 5, respectively, of Article II of Republic Act (*R.A.*) No. 9165, or the *Comprehensive Dangerous Drugs Act of 2002*.

In an Information dated October 21, 2010, Lim was charged with illegal possession of Methamphetamine Hydrochloride (*shabu*), committed as follows:

That on or about October 19, 2010, at more or less 10:00 o'clock in the evening, at Cagayan de Oro City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law to possess or use any dangerous drugs, did then and there, willfully, unlawfully, criminally and knowingly have in his possession, custody and control one (1) heat-sealed transparent plastic sachet containing Methamphetamine hydrochloride, locally known as Shabu, a dangerous drug, with a total weight of 0.02 gram, accused well-knowing that the substance recovered from his possession is a dangerous drug.

Contrary to, and in violation of, Section 11, Article II of Republic Act No. 9165.³

On even date, Lim, together with his stepson, Eldie Gorres y Nave (*Gorres*), was also indicted for illegal sale of *shabu*, committed as follows:

That on or about October 19, 2010, at more or less 10:00 o'clock in the evening, at Cagayan de Oro City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating together and mutually helping one another, without being authorized by law to sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drugs, did then and there willfully, unlawfully, criminally and knowingly sell and/or offer for sale, and give away to a PDEA Agent acting as poseur-buyer One (1) heat-sealed transparent plastic sachet containing Methamphetamine hydrochloride, locally known as Shabu, a dangerous drug, with a total weight of 0.02 gram, accused knowing the same to be a dangerous drug, in consideration of Five Hundred Pesos (Php500.00) consisting of one piece five hundred peso bill, with Serial No. FZ386932, which was previously marked and recorded for the purpose of the buy-bust operation.

Contrary to Section 5, Paragraph 1, Article II of Republic Act No. 9165.⁴

In their arraignment, Lim and Gorres pleaded not guilty.⁵ They were detained in the city jail during the joint trial of the cases.⁶

³ Records (Criminal Case No. 2010-1073), pp. 3-4.

⁴ Records (Criminal Case No. 2010-1074), pp. 3-4.

⁵ Records (Criminal Case No. 2010-1073), pp. 19-20; records (Criminal Case No. 2010-1074), pp. 20-22.

⁶ *Id.* at 2; *Id.* at 2.



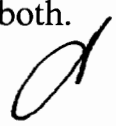
The prosecution presented Intelligence Officer (*IO*) 1 Albert Orellan, IO1 Nestle Carin, IO2 Vincent Orcales, and Police Senior Inspector (*PSI*) Charity Caceres. Aside from both accused, Rubenia Gorres testified for the defense.

Version of the Prosecution

Around 8:00 p.m. on October 19, 2010, IO1 Orellan and his teammates were at Regional Office X of the Philippine Drug Enforcement Agency (*PDEA*). Based on a report of a confidential informant (*CI*) that a certain “Romy” has been engaged in the sale of prohibited drugs in Zone 7, Cabina, Bonbon, Cagayan de Oro City, they were directed by their Regional Director, Lt. Col. Edwin Layese, to gather for a buy-bust operation. During the briefing, IO2 Orcales, IO1 Orellan, and IO1 Carin were assigned as the team leader, the arresting officer/back-up/evidence custodian, and the *poseur*-buyer, respectively. The team prepared a ₱500.00 bill as buy-bust money (with its serial number entered in the *PDEA* blotter), the Coordination Form for the nearest police station, and other related documents.

Using their service vehicle, the team left the regional office about 15 minutes before 10:00 p.m. and arrived in the target area at 10:00 p.m., more or less. IO1 Carin and the *CI* alighted from the vehicle near the corner leading to the house of “Romy,” while IO1 Orellan and the other team members disembarked a few meters after and positioned themselves in the area to observe. IO1 Carin and the *CI* turned at the corner and stopped in front of a house. The *CI* knocked at the door and uttered, “*ayo, nong Romy.*” Gorres came out and invited them to enter. Inside, Lim was sitting on the sofa while watching the television. When the *CI* introduced IO1 Carin as a *shabu* buyer, Lim nodded and told Gorres to get one inside the bedroom. Gorres stood up and did as instructed. After he came out, he handed a small medicine box to Lim, who then took one piece of heat-sealed transparent plastic of *shabu* and gave it to IO1 Carin. In turn, IO1 Carin paid him with the buy-bust money.

After examining the plastic sachet, IO1 Carin executed a missed call to IO1 Orellan, which was the pre-arranged signal. The latter, with the rest of the team members, immediately rushed to Lim’s house. When they arrived, IO1 Carin and the *CI* were standing near the door. They then entered the house because the gate was opened. IO1 Orellan declared that they were *PDEA* agents and informed Lim and Gorres, who were visibly surprised, of their arrest for selling dangerous drug. They were ordered to put their hands on their heads and to squat on the floor. IO1 Orellan recited the Miranda rights to them. Thereafter, IO1 Orellan conducted a body search on both.



When he frisked Lim, no deadly weapon was found, but something was bulging in his pocket. IO1 Orellan ordered him to pull it out. Inside the pocket were the buy-bust money and a transparent rectangular plastic box about 3x4 inches in size. They could see that it contained a plastic sachet of a white substance. As for Gorres, no weapon or illegal drug was seized.

IO1 Orellan took into custody the ₱500.00 bill, the plastic box with the plastic sachet of white substance, and a disposable lighter. IO1 Carin turned over to him the plastic sachet that she bought from Lim. While in the house, IO1 Orellan marked the two plastic sachets. Despite exerting efforts to secure the attendance of the representative from the media and *barangay* officials, nobody arrived to witness the inventory-taking.

The buy-bust team brought Lim and Gorres to the PDEA Regional Office, with IO1 Orellan in possession of the seized items. Upon arrival, they “booked” the two accused and prepared the letters requesting for the laboratory examination on the drug evidence and for the drug test on the arrested suspects as well as the documents for the filing of the case. Likewise, IO1 Orellan made the Inventory Receipt of the confiscated items. It was not signed by Lim and Gorres. Also, there was no signature of an elected public official and the representatives of the Department of Justice (*DOJ*) and the media as witnesses. Pictures of both accused and the evidence seized were taken.

The day after, IO1 Orellan and IO1 Carin delivered both accused and the drug specimens to Regional Crime Laboratory Office 10. IO1 Orellan was in possession of the sachets of *shabu* from the regional office to the crime lab. PSI Caceres, who was a Forensic Chemist, and Police Officer 2 (*PO2*) Bajas⁷ personally received the letter-requests and the two pieces of heat-sealed transparent plastic sachet containing white crystalline substance. PSI Caceres got urine samples from Lim and Gorres and conducted screening and confirmatory tests on them. Based on her examination, only Lim was found positive for the presence of *shabu*. The result was shown in Chemistry Report No. DTCRIM-196 and 197-2010. With respect to the two sachets of white crystalline substance, both were found to be positive of *shabu* after a chromatographic examination was conducted by PSI Caceres. Her findings were reflected in Chemistry Report No. D-228-2010. PSI Caceres, likewise, put her own marking on the cellophane containing the two sachets of *shabu*. After that, she gave them to the evidence custodian. As to the buy-bust money, the arresting team turned it over to the fiscal’s office during the inquest.

⁷ Spelled as “Bajar” in the Request for Laboratory Examination on Drug Evidence (See Records of Criminal Case No. 2010-1073 [pp. 9-10] and Criminal Case No. 2010-1074 [p. 9A]).

Version of the Defense

Around 10:00 p.m. on October 19, 2010, Lim and Gorres were in their house in Cabina, Bonbon, Cagayan de Oro City. Lim was sleeping in the bedroom, while Gorres was watching the television. When the latter heard that somebody jumped over their gate, he stood up to verify. Before he could reach the door, however, it was already forced opened by the repeated pulling and kicking of men in civilian clothing. They entered the house, pointed their firearms at him, instructed him to keep still, boxed his chest, slapped his ears, and handcuffed him. They inquired on where the *shabu* was, but he invoked his innocence. When they asked the whereabouts of "Romy," he answered that he was sleeping inside the bedroom. So the men went there and kicked the door open. Lim was then surprised as a gun was pointed at his head. He questioned them on what was it all about, but he was told to keep quiet. The men let him and Gorres sit on a bench. Lim was apprised of his Miranda rights. Thereafter, the two were brought to the PDEA Regional Office and the crime laboratory. During the inquest proceedings, Lim admitted, albeit without the assistance of a counsel, ownership of the two sachets of *shabu* because he was afraid that the police would imprison him. Like Gorres, he was not involved in drugs at the time of his arrest. Unlike him, however, he was previously arrested by the PDEA agents but was acquitted in the case. Both Lim and Gorres acknowledged that they did not have any quarrel with the PDEA agents and that neither do they have grudges against them or *vice-versa*.

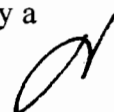
Rubenia, Lim's live-in partner and the mother of Gorres, was at her sister's house in Pita, Pasil, Kauswagan the night when the arrests were made. The following day, she returned home and noticed that the door was opened and its lock was destroyed. She took pictures of the damage and offered the same as exhibits for the defense, which the court admitted as part of her testimony.

RTC Ruling

After trial, the RTC handed a guilty verdict on Lim for illegal possession and sale of *shabu* and acquitted Gorres for lack of sufficient evidence linking him as a conspirator. The *fallo* of the September 24, 2013 Decision states:

WHEREFORE, premises considered, this Court finds that:

1. In Criminal Case No. 2010-1073, accused ROMY LIM y MIRANDA is hereby found GUILTY of violating Section 11, Article II of R.A. 9165 and is hereby sentenced to suffer the penalty of imprisonment ranging from twelve [12] years and one [1] day to thirteen [13] years, and to pay a



Fine in the amount of Three Hundred Thousand Pesos [P300,000.00] without subsidiary imprisonment in case of non-payment of Fine;

2. In Criminal Case No. 2010-1074, accused ROMY LIM y MIRANDA is hereby found GUILTY of violating Section 5, Article II of R.A. 9165, and is hereby sentenced to suffer the penalty of LIFE IMPRISONMENT and to pay the Fine in the amount of Five Hundred Thousand Pesos [P500,000.00].

3. In Criminal Case No. 2010-1074, accused ELDIE GORRES y NAVE is hereby ACQUITTED of the offense charged for failure of the prosecution to prove his guilt beyond reasonable doubt. The Warden of the BJMP having custody of ELDIE GORRES y Nave, is hereby directed to immediately release him from detention unless he is being charged of other crimes which will justify his continued incarceration.⁸

With regard to the illegal possession of a sachet of *shabu*, the RTC held that the weight of evidence favors the positive testimony of IO1 Orellan over the feeble and uncorroborated denial of Lim. As to the sale of *shabu*, it ruled that the prosecution was able to establish the identity of the buyer, the seller, the money paid to the seller, and the delivery of the *shabu*. The testimony of IO1 Carin was viewed as simple, straightforward and without any hesitation or prevarication as she detailed in a credible manner the buy-bust transaction that occurred. Between the two conflicting versions that are poles apart, the RTC found the prosecution evidence worthy of credence and no reason to disbelieve in the absence of an iota of malice, ill-will, revenge or resentment preceding and pervading the arrest of Lim. On the chain of custody of evidence, it was accepted with moral certainty that the PDEA operatives were able to preserve the integrity and probative value of the seized items.

In so far as Gorres is concerned, the RTC opined that the evidence presented were not strong enough to support the claim that there was conspiracy between him and Lim because it was insufficiently shown that he knew what the box contained. It also noted Chemistry Report No. DTCRIM 196 & 197-2010, which indicated that Gorres was "NEGATIVE" of the presence of any illicit drug based on his urine sample.

CA Ruling

On appeal, the CA affirmed the RTC Decision. It agreed with the finding of the trial court that the prosecution adequately established all the elements of illegal sale of a dangerous drug as the collective evidence presented during the trial showed that a valid buy-bust operation was conducted. Likewise, all the elements of illegal possession of a dangerous drug was proven. Lim resorted to denial and could not present any proof or

⁸ Records (Criminal Case No. 2010-1073), pp. 124-125; CA *rollo*, pp. 39-40.



justification that he was fully authorized by law to possess the same. The CA was unconvinced with his contention that the prosecution failed to prove the identity and integrity of the seized prohibited drugs. For the appellate court, it was able to demonstrate that the integrity and evidentiary value of the confiscated drugs were not compromised. The witnesses for the prosecution were able to testify on every link in the chain of custody, establishing the crucial link in the chain from the time the seized items were first discovered until they were brought for examination and offered in evidence in court. Anent Lim's defense of denial and frame-up, the CA did not appreciate the same due to lack of clear and convincing evidence that the police officers were inspired by an improper motive. Instead, the presumption of regularity in the performance of official duty was applied.

Before Us, both Lim and the People manifested that they would no longer file a Supplemental Brief, taking into account the thorough and substantial discussions of the issues in their respective appeal briefs before the CA.⁹ Essentially, Lim maintains that the case records are bereft of evidence showing that the buy-bust team followed the procedure mandated in Section 21(1), Article II of R.A. No. 9165.

Our Ruling

The judgment of conviction is reversed and set aside, and Lim should be acquitted based on reasonable doubt.

At the time of the commission of the crimes, the law applicable is R.A. No. 9165.¹⁰ Section 1(b) of Dangerous Drugs Board Regulation No. 1, Series of 2002, which implements the law, defines chain of custody as –

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.¹¹

The chain of custody rule is but a variation of the principle that real evidence must be authenticated prior to its admission into evidence.¹² To establish a chain of custody sufficient to make evidence admissible, the

⁹ *Rollo*, pp. 26-35.

¹⁰ R.A. No. 9165 took effect on July 4, 2002 (See *People v. De la Cruz*, 591 Phil. 259, 272 [2008]).

¹¹ See *People v. Badilla*, 794 Phil. 263, 278 (2016); *People v. Arenas*, 791 Phil. 601, 610 (2016); and *Saraum v. People*, 779 Phil. 122, 132 (2016).

¹² *United States v. Rawlins*, 606 F.3d 73 (2010).

proponent needs only to prove a **rational basis** from which to conclude that the evidence is what the party claims it to be.¹³ In other words, in a criminal case, the prosecution must offer sufficient evidence from which the trier of fact could **reasonably believe** that an item still is what the government claims it to be.¹⁴ Specifically in the prosecution of illegal drugs, the well-established federal evidentiary rule in the United States is that when the evidence is not readily identifiable and is susceptible to alteration by tampering or contamination, courts require a more stringent foundation entailing a chain of custody of the item with **sufficient completeness** to render it improbable that the original item has either been exchanged with another or been contaminated or tampered with.¹⁵ This was adopted in *Mallillin v. People*,¹⁶ where this Court also discussed how, ideally, the chain of custody of seized items should be established:

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.¹⁷

Thus, the links in the chain of custody that must be established are: (1) the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; (2) the turnover of the seized illegal drug by the apprehending officer to the investigating officer; (3) the turnover of the illegal drug by the investigating officer to the forensic chemist for

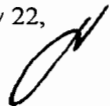
¹³ *United States v. Rawlins*, *supra* note 12, as cited in *United States v. Mehmood*, 2018 U.S. App. LEXIS 19232 (2018); *United States v. De Jesus-Concepcion*, 652 Fed. Appx. 134 (2016); *United States v. Rodriguez*, 2015 U.S. Dist. LEXIS 35215 (2015); and *United States v. Mark*, 2012 U.S. Dist. LEXIS 95130 (2012).

¹⁴ See *United States v. Rawlins*, *supra* note 12, as cited in *United States v. Mark*, *supra* note 13.

¹⁵ See *United States v. Cardenas*, 864 F.2d 1528 (1989), as cited in *United States v. Yeley-Davis*, 632 F.3d 673 (2011); *United States v. Solis*, 55 F. Supp. 2d 1182 (1999); *United States v. Anderson*, 1994 U.S. App. LEXIS 9193 (1994); *United States v. Hogg*, 1993 U.S. App. LEXIS 13732 (1993); *United States v. Rodriguez-Garcia*, 983 F.2d 1563 (1993); *United States v. Johnson*, 977 F.2d 1360 (1992); and *United States v. Clonts*, 966 F.2d 1366 (1992).

¹⁶ *Mallillin v. People*, 576 Phil. 576 (2008).

¹⁷ *Mallillin v. People*, *supra*, at 587, as cited in *People v. Tamaño*, G.R. No. 208643, December 5, 2016, 812 SCRA 203, 228-229; *People v. Badilla*, *supra* note 11, at 280; *Saraum v. People*, *supra* note 11, at 132-133; *People v. Dalawis*, 772 Phil. 406, 417-418 (2015); and *People v. Flores*, 765 Phil. 535, 541-542 (2015). It appears that *Mallillin* was erroneously cited as "*Lopez v. People*" in *People v. De la Cruz*, 589 Phil. 259 (2008), *People v. Sanchez*, 590 Phil. 214 (2008), *People v. Garcia*, 599 Phil. 416 (2009), *People v. Denoman*, 612 Phil. 1165 (2009), and *People v. Abelarde*, G.R. No. 215713, January 22, 2018.



laboratory examination; and (4) the turnover and submission of the illegal drug from the forensic chemist to the court.¹⁸

Seizure and marking of the illegal drug as well as the turnover by the apprehending officer to the investigating officer

Section 21(1), Article II of R.A. No. 9165 states:

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[.]¹⁹

Supplementing the above-quoted provision, Section 21(a) of the Implementing Rules and Regulations (*IRR*) of R.A. No. 9165 mandates:

(a) The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof: Provided, that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; Provided, further, that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly

¹⁸ *People v. Vicente Sipin y De Castro*, G.R. No. 224290, June 11, 2018; *People v. Amaro*, 786 Phil. 139, 148 (2016); and *People v. Enad*, 780 Phil. 346, 358 (2016).

¹⁹ See *People v. Sic-Open*, 795 Phil. 859, 872 (2016); *People v. Badilla*, *supra* note 11, at 275-276; *People v. Dela Cruz*, 783 Phil. 620, 632 (2016); *People v. Asislo*, 778 Phil. 509, 516 (2016); *People v. Dalawis*, *supra* note 17, at 416; and *People v. Flores*, *supra* note 17, at 540.

preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items.²⁰

On July 15, 2014, R.A. No. 10640 was approved to amend R.A. No. 9165. Among other modifications, it essentially incorporated the saving clause contained in the IRR, thus:

(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.

In her Sponsorship Speech on Senate Bill No. 2273, which eventually became R.A. No. 10640, Senator Grace Poe admitted that “while Section 21 was enshrined in the Comprehensive Dangerous Drugs Act to safeguard the integrity of the evidence acquired and prevent planting of evidence, the application of said section resulted in the ineffectiveness of the government's campaign to stop increasing drug addiction and also, in the conflicting decisions of the courts.”²¹ Specifically, she cited that “compliance with the rule on witnesses during the physical inventory is difficult. For one, media representatives are not always available in all corners of the Philippines, especially in more remote areas. For another, there were instances where elected barangay officials themselves were involved in the punishable acts apprehended.”²² In addition, “[t]he requirement that inventory is required to be done in police station is also very limiting. Most police stations appeared to be far from locations where accused persons were apprehended.”²³

Similarly, Senator Vicente C. Sotto III manifested that in view of the substantial number of acquittals in drug-related cases due to the varying interpretations of the prosecutors and the judges on Section 21 of R.A. No. 9165, there is a need for “certain adjustments so that we can plug the

²⁰ *People v. Sic-Open*, supra note 19, at 873; *People v. Badilla*, supra note 11, at 276; *People v. Dela Cruz*, supra note 19, at 633; *People v. Asislo*, supra note 19, at 516-517; *People v. Dalawis*, supra note 17, at 417; and *People v. Flores*, supra note 17, at 541.

²¹ Senate Journal. Session No. 80. 16th Congress, 1st Regular Session. June 4, 2014. p. 348.

²² *Id.*

²³ *Id.*

loopholes in our existing law” and “ensure [its] standard implementation.”²⁴
In his Co-sponsorship Speech, he noted:

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

x x x x

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

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

Non-observance of the prescribed procedures should not automatically mean that the seizure or confiscation is invalid or illegal, as long as the law enforcement officers could justify the same and could prove that the integrity and the evidentiary value of the seized items are not tainted. This is the effect of the inclusion in the proposal to amend the phrase "justifiable grounds." There are instances wherein there are no media people or representatives from the DOJ available and the absence of these witnesses should not automatically invalidate the drug operation conducted. Even the presence of a public local elected official also is sometimes impossible especially if the elected official is afraid or scared.²⁵

We have held that the immediate physical inventory and photograph of the confiscated items at the place of arrest may be excused in instances when the safety and security of the apprehending officers and the witnesses required by law or of the items seized are threatened by immediate or extreme danger such as retaliatory action of those who have the resources

²⁴ *Id.* at 349.

²⁵ *Id.* at 349-350.



and capability to mount a counter-assault.²⁶ The present case is not one of those.

Here, IO1 Orellan took into custody the ₱500.00 bill, the plastic box with the plastic sachet of white substance, and a disposable lighter. IO1 Carin also turned over to him the plastic sachet that she bought from Lim. While in the house, IO1 Orellan marked the two plastic sachets. IO1 Orellan testified that he immediately conducted the marking and physical inventory of the two sachets of *shabu*.²⁷ To ensure that they were not interchanged, he separately marked the item sold by Lim to IO1 Carin and the one that he recovered from his possession upon body search as BB AEO 10-19-10 and AEO-RI 10-19-10, respectively, with both bearing his initial/signature.²⁸

Evident, however, is the absence of an elected public official and representatives of the DOJ and the media to witness the physical inventory and photograph of the seized items.²⁹ In fact, their signatures do not appear in the Inventory Receipt.

The Court stressed in *People v. Vicente Sipin y De Castro*:³⁰

The prosecution bears the burden of proving a valid cause for non-compliance with the procedure laid down in Section 21 of R.A. No. 9165, as amended. It has the positive duty to demonstrate observance thereto in such a way that during the trial proceedings, it must initiate in acknowledging and justifying any perceived deviations from the requirements of law. Its failure to follow the mandated procedure must be adequately explained, and must be proven as a fact in accordance with the rules on evidence. It should take note that the rules require that the apprehending officers do not simply mention a justifiable ground, but also clearly state this ground in their sworn affidavit, coupled with a statement on the steps they took to preserve the integrity of the seized items. Strict adherence to Section 21 is required where the quantity of illegal drugs seized is miniscule, since it is highly susceptible to planting, tampering or alteration of evidence.³¹

²⁶ See *People v. Mola*, G.R. No. 226481, April 18, 2018.

²⁷ TSN, June 2, 2011, pp. 25-28.

²⁸ *Id.* at 17-19.

²⁹ Under the original provision of Section 21 (1) of R.A. No. 9165, after seizure and confiscation of the drugs, the apprehending team was required to immediately conduct a physical inventory and to photograph the same in the presence of (1) the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, (2) a representative from the media **and** (3) the DOJ, and (4) any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof. As amended by R.A. No. 10640, it is now mandated that the conduct of physical inventory and photograph of the seized items must be in the presence of (1) the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, (2) with an elected public official and (3) a representative of the National Prosecution Service **or** the media who shall sign the copies of the inventory and be given a copy thereof (See *People v. Ocampo*, G.R. No. 232300, August 1, 2018; *People v. Allingag*, G.R. No. 233477, July 30, 2018; *People v. Vicente Sipin y De Castro*, *supra* note 18; *People v. Reyes*, G.R. No. 219953, April 23, 2018; and *People v. Mola*, *supra* note 26).

³⁰ *Supra* note 18.

³¹ See also *People v. Reyes*, *supra* note 29 and *People v. Mola*, *supra* note 26.

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

(1) **their attendance was impossible because the place of arrest was a remote area; (2) their safety during the inventory and photograph of the seized drugs was threatened by an immediate retaliatory action of the accused or any person/s acting for and in his/her behalf; (3) the elected official themselves were involved in the punishable acts sought to be apprehended; (4) earnest efforts to secure the presence of a DOJ or media representative and an elected public official within the period required under Article 125 of the Revised Penal Code prove futile through no fault of the arresting officers, who face the threat of being charged with arbitrary detention; or (5) time constraints and urgency of the anti-drug operations, which often rely on tips of confidential assets, prevented the law enforcers from obtaining the presence of the required witnesses even before the offenders could escape.**³²

Earnest effort to secure the attendance of the necessary witnesses must be proven. *People v. Ramos*³³ requires:

It is well to note that the absence of these required witnesses does not *per se* render the confiscated items inadmissible. However, a justifiable reason for such failure or a **showing of any genuine and sufficient effort to secure the required witnesses** under Section 21 of RA 9165 must be adduced. In *People v. Umipang*, the Court held that the prosecution must show that **earnest efforts** were employed in contacting the representatives enumerated under the law for “a sheer statement that representatives were unavailable without so much as an explanation on whether serious attempts were employed to look for other representatives, given the circumstances is to be regarded as a flimsy excuse.” Verily, mere statements of unavailability, absent actual serious attempts to contact the required witnesses are unacceptable as justified grounds for non-compliance. These considerations arise from the fact that police officers are ordinarily given sufficient time – beginning from the moment they have received the information about the activities of the accused until the time of his arrest – to prepare for a buy-bust operation and consequently, make the necessary arrangements beforehand knowing full well that they would have to strictly comply with the set procedure prescribed in Section 21 of RA 9165. As such, police officers are compelled not only to state reasons for their 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 circumstances, their actions were reasonable.³⁴

³² *People v. Vicente Sipin y De Castro*, *supra* note 18. See also *People v. Reyes*, *supra* note 29. and *People v. Mola*, *supra* note 26.

³³ G.R. No. 233744, February 28, 2018. (Citations omitted).

³⁴ See also *People v. Crespo*, G.R. No. 230065, March 14, 2018 and *People v. Sanchez*, G.R. No. 231383, March 7, 2018. (Emphasis and underscoring supplied)

In this case, IO1 Orellan testified that no members of the media and barangay officials arrived at the crime scene because it was late at night and it was raining, making it unsafe for them to wait at Lim's house.³⁵ IO2 Orcales similarly declared that the inventory was made in the PDEA office considering that it was late in the evening and there were no available media representative and barangay officials despite their effort to contact them.³⁶ He admitted that there are times when they do not inform the barangay officials prior to their operation as they might leak the confidential information.³⁷ We are of the view that these justifications are unacceptable as there was no genuine and sufficient attempt to comply with the law.

The testimony of team-leader IO2 Orcales negates any effort on the part of the buy-bust team to secure the presence of a barangay official during the operation:

ATTY. DEMECILLO:

x x x x

Q x x x Before going to the house of the accused, why did you not contact a barangay official to witness the operation?

A There are reasons why we do not inform a barangay official before our operation, Sir.

Q Why?

A We do not contact them because we do not trust them. They might leak our information.³⁸

The prosecution likewise failed to explain why they did not secure the presence of a representative from the Department of Justice (DOJ). While the arresting officer, IO1 Orellan, stated in his Affidavit that they only tried to coordinate with the barangay officials and the media, the testimonies of the prosecution witnesses failed to show that they tried to contact a DOJ representative.

The testimonies of the prosecution witnesses also failed to establish the details of an earnest effort to coordinate with and secure presence of the required witnesses. They also failed to explain why the buy-bust team felt "unsafe" in waiting for the representatives in Lim's house, considering that the team is composed of at least ten (10) members, and the two accused were the only persons in the house.



³⁵ TSN, June 2, 2011, p. 19.

³⁶ TSN, August 5, 2011, p. 13.

³⁷ *Id.* at 15.

³⁸ *Id.* at 14-15.

It bears emphasis that the rule that strict adherence to the mandatory requirements of Section 21(1) of R.A. No. 9165, as amended, and its IRR may be excused as long as the integrity and the evidentiary value of the confiscated items are properly preserved applies not just on arrest and/or seizure by reason of a legitimate buy-bust operation but also on those lawfully made in air or sea port, detention cell or national penitentiary, checkpoint, moving vehicle, local or international package/parcel/mail, or those by virtue of a consented search, stop and frisk (*Terry* search), search incident to a lawful arrest, or application of plain view doctrine where time is of the essence and the arrest and/or seizure is/are not planned, arranged or scheduled in advance.

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

A.1.10. Any justification or explanation in cases of noncompliance with the requirements of Section 21 (1) of R.A. No. 9165, as amended, shall be clearly stated in the sworn statements/affidavits of the apprehending/seizing officers, as well as the steps taken to preserve the integrity and evidentiary value of the seized/confiscated items. Certification or record of coordination for operating units other than the PDEA pursuant to Section 86 (a) and (b), Article IX of the IRR of R.A. No. 9165 shall be presented.³⁹

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

1. In the sworn statements/affidavits, the apprehending/seizing officers must state their compliance with the requirements of Section 21 (1) of R.A. No. 9165, as amended, and its IRR.
2. In case of non-observance of the provision, the apprehending/seizing officers must state the justification or explanation therefor as well as the steps they have taken in order to preserve the integrity and evidentiary value of the seized/confiscated items.



³⁹ See *People v. Alvarado*, G.R. No. 234048, April 23, 2018 and *People v. Saragena*, G.R. No. 210677, August 23, 2017.

3. If there is no justification or explanation expressly declared in the sworn statements or affidavits, the investigating fiscal must not immediately file the case before the court. Instead, he or she must refer the case for further preliminary investigation in order to determine the (non) existence of probable cause.
4. If the investigating fiscal filed the case despite such absence, the court may exercise its discretion to either refuse to issue a commitment order (or warrant of arrest) or dismiss the case outright for lack of probable cause in accordance with Section 5,⁴⁰ Rule 112, Rules of Court.

WHEREFORE, premises considered, the February 23, 2017 Decision of the Court of Appeals in CA-G.R. CR HC No. 01280-MIN, which affirmed the September 24, 2013 Decision of Regional Trial Court, Branch 25, Cagayan de Oro City, in Criminal Cases Nos. 2010-1073 and 2010-1074, finding accused-appellant Romy Lim y Miranda guilty of violating Sections 11 and 5, respectively, of Article II of Republic Act No. 9165, is **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant Romy Lim y Miranda is **ACQUITTED** on reasonable doubt, and is **ORDERED IMMEDIATELY RELEASED** from detention, unless he is being lawfully held for another cause. Let an entry of final judgment be issued immediately.

Let a copy of this Decision be furnished the Superintendent of the Davao Prison and Penal Farm, B.E. Dujali, Davao del Norte, for immediate implementation. The said Director is **ORDERED** to **REPORT** to this Court within five (5) days from receipt of this Decision the action he has taken.

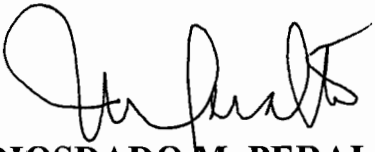
Let copies of this Decision be furnished to the Secretary of the Department of Justice, as well as to the Head/Chief of the National Prosecution Service, the Office of the Solicitor General, the Public Attorney's Office, the Philippine National Police, the Philippine Drug Enforcement Agency, the National Bureau of Investigation, and the

⁴⁰ SEC. 5. *When warrant of arrest may issue.* — (a) *By the Regional Trial Court.* — Within ten (10) days from the filing of the complaint or information, the judge shall personally evaluate the resolution of the prosecutor and its supporting evidence. He may immediately dismiss the case if the evidence on record clearly fails to establish probable cause. If he finds probable cause, he shall issue a warrant of arrest, or a commitment order if the accused has already been arrested pursuant to a warrant issued by the judge who conducted the preliminary investigation or when the complaint or information was filed pursuant to Section 6 of this Rule. In case of doubt on the existence of probable cause, the judge may order the prosecutor to present additional evidence within five (5) days from notice and the issue must be resolved by the court within thirty (30) days from the filing of the complaint of information.



Integrated Bar of the Philippines for their information and guidance. Likewise, the Office of the Court Administrator is **DIRECTED** to **DISSEMINATE** copies of this Decision to all trial courts, including the Court of Appeals.

SO ORDERED.



DIOSDADO M. PERALTA
Associate Justice

WE CONCUR:

Teresita Leonardo de Castro
TERESITA J. LEONARDO-DE CASTRO
Chief Justice

Antonio Carpio
ANTONIO T. CARPIO
Associate Justice

Lucas P. Bersamin
LUCAS P. BERSAMIN
Associate Justice

On wellness leave
MARIANO C. DEL CASTILO
Associate Justice

Estela M. Perlas-Bernabe
ESTELA M. PERLAS-BERNABE
Associate Justice

See separate concurring opinion
[Signature]
MARVIC M.V.F. LEONEN
Associate Justice

Francis H. Jardeleza *no part*
FRANCIS H. JARDELEZA *prison*
Associate Justice *OSF*
action

See separate concurring opinion.
[Signature]
ALEREDO BENJAMIN S. CAGUIOA
Associate Justice

[Signature]
NOEL GIMENEZ TIJAM
Associate Justice

Reyes
ANDRES B. REYES, JR.
Associate Justice

Alexander G. Gesmundo
ALEXANDER G. GESMUNDO
Associate Justice

[Signature]
JOSE C. REYES, JR.
Associate Justice

CERTIFICATION

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

Teresita Leonardo de Castro
TERESITA J. LEONARDO-DE CASTRO
Chief Justice