



Republic of the Philippines
Supreme Court
Manila

SUPREME COURT OF THE PHILIPPINES
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SECOND DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

G.R. No. 222648

-versus -

Present:

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

EDITHA TAMPAN,
Accused-Appellant.

Promulgated:

13 FEB 2019

AM Cabalag/Prefecto

x ----- x

DECISION

REYES, J. JR., J.:

This is an appeal filed by accused-appellant Editha Tampan (Tampan) from the Decision¹ dated April 29, 2015 of the Court of Appeals-Cebu City (CA) in CA-G.R. [CEB] CR-HC No. 01768, affirming the Decision² dated November 21, 2013 of the Regional Trial Court (RTC), Branch 57, Cebu City, in Criminal Case Nos. CBU-90433 and CBU-90434, finding Tampan guilty beyond reasonable doubt of illegal sale of dangerous drugs and illegal possession of dangerous drugs, defined and penalized under Sections 5 and 11, respectively, Article II of Republic Act (R.A.) No. 9165,³ otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

* Additional member per S.O. No. 2630 dated December 18, 2018.

¹ Penned by Associate Justice Ma. Luisa C. Quijano-Padilla, with Associate Justices Edgardo L. Delos Santos and Marie Christine Azcarraga-Jacob, concurring; CA *rollo*, pp. 63-80.

² Penned by Presiding Judge Enriqueta Loquillano-Belardino; *id.* at 23-27.

³ 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.

V

The Information against Tampan read as follows:

[Criminal Case No.] CBU-90433

That on the 7th day of October 2010 at about 6:45 o'clock [sic] in the evening, at Barangay Liburon, Carcar, Cebu, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without authority of law, did then and there willfully, unlawfully and feloniously sell, deliver and distribute to PDEA agent, acting as poseur buyer[,] one (1) heat[-]sealed transparent plastic pack of white crystalline substance weighing 0.02 gram, in consideration of the sum of two hundred (P200.00) pesos, consisting of two (2) one hundred[-]peso bills with serial numbers TK935402 and VQ963956, used as buy bust money, which when subjected for laboratory examination gave positive result for the presence of methamphetamine hydrochloride, a dangerous drug.

CONTRARY TO LAW.

Cebu City, Philippines, October 12, 2010[.]⁴

[Criminal Case No.] CBU-90434

That on the 7th day of October 2010 at about 6:45 o'clock [sic] in the evening, at Barangay Liburon, Carcar, Cebu, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without authority of law, did then and there willfully, unlawfully and feloniously have in her possession, custody and control[,] six (6) small heat[-]sealed transparent plastic pack of white crystalline substance weighing 0.02 gram each and one (1) medium heat[-]sealed transparent plastic pack of white crystalline substance, weighing 0.51 gram, which when subjected to laboratory examination gave positive result for the presence of methamphetamine hydrochloride, a dangerous drug.

CONTRARY TO LAW.

Cebu City, Philippines, October 12, 2010[.]⁵

When arraigned, Tampan pleaded not guilty to both charges.⁶ Trial on the merits thereafter ensued.

Version of the Prosecution

On October 7, 2010, the Philippine Drug Enforcement Agency (PDEA) Regional Office No. 7, Cebu City, received information about the illegal drug activities of a certain "Editha Tampan." Intelligence Agent 3 George Cansancio (IA3 Cansancio) formed and led a team to conduct the buy bust operation and assigned Intelligence Officer 1 Joebane Labajo (IO1 Labajo) as the poseur-buyer, and IO1 Nicholas Gomez (IO1 Gomez) and

⁴ CA *rollo*, p. 64.

⁵ *Id.*

⁶ *Id.* at 65.

some other PDEA agents as back-up officers. The buy[-]bust money, two pieces of ₱100.00-peso bill, was marked by IO1 Labajo with his initials, JL.⁷

After the pre-operational briefing, the buy[-]bust team proceeded to Tampan's place in Sitio Lomboy, Barangay Liburon, Carcar City, Cebu. IO1 Labajo and the confidential informant went to Tampan's house as the rest of the team positioned themselves in the area. The informant called Tampan who then went out of her house. The informant introduced IO1 Labajo as his cousin who wanted to buy *shabu* from her. When Tampan asked IO1 Labajo how much *shabu* he wanted to buy, the latter did not answer and handed her the marked money worth ₱200.00. Tampan then asked him why he would only buy ₱200.00 worth of *shabu*, to which IO1 Labajo replied that he did not have any more money. Tampan went inside her house and returned with a plastic pack containing several sachets of white crystalline substance suspected to be *shabu*. She took one sachet from the pack and gave it to IO1 Labajo. Thereafter, IO1 Labajo discreetly reached for his mobile phone from his pocket and made a missed call to the other team members as a pre-arranged signal. When the members of the apprehending team rushed to their location, IO1 Labajo held Tampan, introduced himself as PDEA agent, and seized from her the pack of plastic sachets of *shabu* and the buy bust money. The pack contained six small plastic sachets of *shabu* and one medium-sized sachet of *shabu*. IO1 Labajo placed Tampan in handcuffs while IO1 Gomez informed her of her constitutional rights. Since people started to gather in the area, IA3 Cansancio instructed the buy[-]bust team to leave and conduct the inventory of the seized items in their office.⁸

The entrapment team, together with Tampan, returned to its office and prepared the booking sheet. IO1 Labajo conducted an inventory of the confiscated items in the presence of Tampan, Virgilio Salde, Jr. of *Bombo Radyo*, and Barangay Councilor Vicente Quintana, Jr., who all signed the Certificate of Inventory. IO1 Labajo placed the markings "BB-EST 10/7/10" on the sachet subject of the illegal sale and "EST-1 10/7/10" to "EST-7 10/7/10" on the sachets seized from Tampan's possession and signed each of them. He also took pictures of the sachets of *shabu*, the marked money, and the signing of the Certificate of Inventory. Thereafter, he prepared a letter-request for laboratory examination of the seized illegal drugs and delivered them to the Philippine National Police (PNP) Crime Laboratory. The letter-request and the seized items were received by Police Officer 3 Supilanas (PO3 Supilanas), who, in turn, delivered them to Police Superintendent Salinas (P/Supt. Salinas) for laboratory examination. The contents of the seized plastic sachets yielded positive results for the presence of methamphetamine hydrochloride, commonly known as *shabu*, a dangerous drug per Chemistry Report No. D-966-2010.⁹

⁷ Id. at 44.

⁸ Id. at 45.

⁹ Id. at 46.

Version of the Defense

Tampan denied the accusation and recalled that at around 6:00 p.m. of October 7, 2010, she was having dinner with her children and her friend when five PDEA officers entered their house and declared an arrest for the sale of *shabu*. She claimed that she only saw the plastic sachets of *shabu* allegedly seized from her at the PDEA Office when IO1 Gomez took them out of his drawer. She also averred that the PDEA officers asked for her name when she was already on board their vehicle. She later learned that the subject of the arrest was a certain “Michelle Gatelaligan”¹⁰ whose house is located at the back of her place. She also maintained that she was made to sign the Certificate of Inventory without having been able to read its contents.¹¹

In a Decision¹² dated November 21, 2013, the RTC found Tampan guilty beyond reasonable doubt of violating Sections 5 and 11, Article II of R.A. No. 9165. The *fallo* states:

WHEREFORE, in view of the foregoing, the Court finds accused Editha Tampan guilty beyond reasonable doubt of the crimes charged.

Accordingly, she is sentenced to suffer the following penalties:

1. [L]ife imprisonment and a fine of ₱500,000.00 for Violation of Section 5, Article II of [R.A. No.] 9165;
2. [T]welve (12) years and one (1) day to fifteen (15) years and a fine of ₱300,000.00 for Violation of Section 11, Article II of [R.A. No.] 9165.

The packet of [*shabu*], subject of sale, and the recovered seven (7) packs of [*shabu*] are forfeited in favor of the government.

SO ORDERED.¹³

The RTC gave credence to the categorical assertions of the police officers that the illegal sale of dangerous drugs was consummated upon the delivery of the plastic sachet of *shabu* to IO1 Labajo and the receipt of the marked money by Tampan. Further, after Tampan’s arrest for illegal sale, she was found to have in her possession a pack containing seven plastic sachets of *shabu*.¹⁴ The RTC found that the integrity and evidentiary value of the seized *shabu* have been preserved as it was shown that IO1 Labajo

¹⁰ Sometimes referred to as “Michelle Satinigan” in some parts of the *rollo*.

¹¹ CA *rollo*, pp. 15-16.

¹² Supra note 2.

¹³ CA *rollo*, p. 27.

¹⁴ Id. at 25.

was always in custody of all the packs of *shabu* from the time of confiscation until their delivery to the PNP Crime Laboratory for examination. PO3 Supilanas received the seized *shabu* and turned them over to P/Supt. Salinas who conducted the laboratory examination and thereafter submitted them and her report to evidence custodian Bucayan for safekeeping. P/Supt. Salinas retrieved them from Bucayan for presentation in court.¹⁵

On appeal, the CA affirmed the findings of the trial court. The dispositive portion of the April 29, 2015 Decision¹⁶ reads:

WHEREFORE, in view of all the foregoing, the appeal is **DENIED**. The Decision of the Regional Trial Court (RTC), Branch 57, Cebu City, dated November 21, 2013, in Criminal Cases Nos. CBU-90433 and CBU-90434, finding accused-appellant Editha Tampan guilty beyond reasonable doubt of violation of Sections 5 and 11, Article II, of Republic Act (RA) 9165, is hereby **AFFIRMED**.

SO ORDERED.

The CA declared that the prosecution has sufficiently established all the elements of the illegal sale and illegal possession of dangerous drugs. It did not give weight to Tampan's defense of frame-up and found IO1 Labajo's testimony credible and worthy of belief. It held that the apprehending officers substantially complied with the chain of custody requirement and successfully preserved the integrity and evidentiary value of the seized items. Finally, it emphasized that the marking of the seized items at the PDEA Office was justified because of the swelling crowd that gathered after Tampan's arrest, endangering not only the entrapment operation but also their lives.

Hence, the present appeal.

Our Ruling

We resolve to acquit accused-appellant Tampan on the ground of reasonable doubt.

To secure conviction for illegal sale of dangerous drugs, the prosecution must establish: (a) the identity of the buyer and the seller, the object and the consideration; and (b) the delivery of the thing sold and the payment.¹⁷ For illegal possession of dangerous drugs, on the other hand, these elements must concur: (a) the accused was in possession of an item or object identified as a prohibited drug; (b) such possession was not authorized

¹⁵ Id. at 26.

¹⁶ Supra note 1.

¹⁷ *People v. Cuevas*, G.R. No. 238906, November 5, 2018.

by law; and (c) the accused freely and consciously possessed the said drug.¹⁸ In both offenses, the existence of the drug is of paramount importance such that no drug case can be successfully prosecuted and no judgment of conviction can be validly sustained without the identity of the dangerous substance being established with moral certainty, it being the very *corpus delicti* of the violation of the law.¹⁹ There must be a clear showing that “the drug itself is the object of the sale” (illegal sale) or that “it is the very thing that is possessed by the accused” (illegal possession).²⁰ Thus, the chain of custody over the confiscated drugs must be sufficiently proved.

Chain of custody is a procedural mechanism that ensures that the identity and integrity of the *corpus delicti* are clear and free from any unnecessary doubt or uncertainty. It secures the close and careful monitoring and recording of the custody, safekeeping, and transfer of the confiscated illegal drug so as to preclude any incident of planting, tampering, or switching of evidence. The links in the chain, to wit: (1) the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; (2) the turnover of the illegal drug seized by the apprehending officer to the investigating officer; (3) the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and (4) the turnover and submission of the marked illegal drug seized from the forensic chemist to the court²¹ must be adequately proved in such a way that no question can be raised as to the authenticity of the dangerous drug presented in court. The Court thoroughly laid down the manner of establishing the chain of custody of seized items in *Mallillin v. People*:²²

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.

¹⁸ Id.

¹⁹ *People v. Rivera*, G.R. No. 225786, November 14, 2018.

²⁰ *People v. Bintaib*, G.R. No. 217805, April 2, 2018.

²¹ *People v. Lim*, G.R. No. 231989, September 4, 2018.

²² *Mallillin v. People*, 576 Phil. 576, 587 (2008).

Simply put, it is incumbent upon the prosecution to establish that the confiscated drugs and the drugs submitted in court are one and the same by providing a clear account of the following: 1) the date and time when, as well as the manner, in which the illegal drug was transferred; 2) the handling, care and protection of the person who had interim custody of the seized illegal drug; 3) the condition of the drug specimen upon each transfer of custody; and 4) the final disposition of the seized illegal drug.

The chain of custody rule is embodied in Section 21, Article II of R.A. No. 9165 which specifies:

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.

Section 21(a) of the Implementing Rules and Regulations (IRR) of R.A. No. 9165 further provides:

SEC. 21 (a) The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof: *Provided*, that **the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; *Provided, further*, that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items.** (Emphasis supplied)

On July 15, 2014, Section 21 was amended by R.A. No. 10640²³ to this effect:

SEC. 21. x x x

(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. (Emphasis and underscoring supplied)

Since the offenses were committed on October 7, 2010, the Court is constrained to evaluate the apprehending officers' compliance with the chain of custody requirement in accordance with Section 21 of R.A. No. 9165. The law sets forth the fine points of the **physical inventory and photograph** of the seized illegal drug such that:

1. They must be done immediately after seizure or confiscation;
2. They must be done in the presence of the following persons: a) the accused or his representative or counsel; b) representative from the media; c) representative from the DOJ; and d) any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof; and
3. They shall be conducted at the following places: a) place where the search warrant is served; or b) at the nearest police station or nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizure.

Equally telling is the **marking** of the seized illegal drugs and other related items which serves as the starting point of the custodial link.²⁴ A member of the buy[-]bust team or the poseur-buyer writes his/her initials and

²³ AN ACT TO FURTHER STRENGTHEN THE ANTI-DRUG CAMPAIGN OF THE GOVERNMENT, AMENDING FOR THE PURPOSE SECTION 21 OF R.A. NO. 9165, OTHERWISE KNOWN AS THE "COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002."

²⁴ *People v. Dahil*, 750 Phil. 212, 232 (2015).

places his signature on the seized item so that from the time of its confiscation up to its final disposition, the marked evidence remains isolated from the corpus of all other similar or related evidence.²⁵ While R.A. No. 9165 is silent on the marking requirement, the Court cannot overstress its significance in illegal drugs cases as it erases any suspicion on the authenticity of the *corpus delicti*.

Measured against the foregoing yardstick, the prosecution miserably failed to demonstrate the apprehending officers' faithful compliance with the rule on chain of custody.

The members of the buy[-]bust team obviously did not observe the procedural safeguards embodied in Section 21 of R.A. No. 9165 and its IRR. The marking, physical inventory and photographing of the seized illegal drugs were not immediately done at the place of seizure. The presence of a representative from the media, the DOJ, and an elected public official were not secured to witness the inventory and photographing of the confiscated dangerous drugs at the time of apprehension and seizure. The physical inventory and the photographing at the PDEA Office were not conducted in the presence of a DOJ representative who is also required to sign the inventory and to have a copy thereof. Notwithstanding the foregoing deviations from Section 21 of R.A. No. 9165, the RTC and the CA were in unison in holding that there was substantial compliance with the law and that the integrity of the illegal drugs seized from Tampan was preserved.

We do not agree.

IO1 Labajo transported a total of eight plastic sachets containing white crystalline substance suspected to be *shabu* from the place of apprehension to the PDEA Office. While in transit, the seized plastic sachets of illegal drugs did not have markings or labels as to render them readily identifiable. According to the RTC, the possibility of mix-up is remote since "the packs of *shabu*, subject of possession were all placed in one plastic pack separate from the *shabu* sold x x x."²⁶ But the RTC failed to show that the belated marking did not expose the seized illegal drugs to the threat of alteration, substitution, or tampering by accident or otherwise – the dangers that the marking requirement seeks to avert. Other than IO1 Labajo's claim that he himself handled the illegal drugs and transported them from the place of arrest and seizure to the place of marking and inventory at the PDEA Office, no convincing evidence was offered to prove that the items marked were in fact the plastic sachet bought from Tampan and the sachets seized from Tampan's possession. In the same vein, IO1 Labajo failed to ventilate the precautionary measures taken in preserving the identity of the seized items given that they were unmarked when they were transported. Clearly,

²⁵ Id.

²⁶ CA rollo, p. 26.

the probability that the integrity and evidentiary value of the *corpus delicti* had been compromised is extant in the first link of the chain of custody.

Also, the Court cannot turn a blind eye on the absence of a representative from the media, a representative from the DOJ, and an elected public official: 1) at the time of apprehension and seizure; and 2) at or near the place of apprehension and seizure. In *People v. Adobar*,²⁷ the Court shed light on when the presence of a representative from the media, the DOJ, and an elected public official is required:

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

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

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

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

The reason is simple, it is at the time of arrest or at the time of the drugs’ “seizure and confiscation” that the presence of the three (3) witnesses is most needed. **It is their presence at that point that would insulate against the police practices of planting evidence.**

²⁷ G.R. No. 222559, June 6, 2018.

In *People v. [Lim]*,²⁸ the Court ruled:

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

The physical inventory and photographing of the seized items were not executed immediately at the place of apprehension and seizure. While these procedures may be conducted at the nearest police station or at the nearest office of the apprehending officer/team, substantial compliance with Section 21 of R.A. No. 9165 may be allowed if attended with good and sufficient reason, a condition that was not met in this case. In *People v. Lim*, it has been held that “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 and capability to mount a counter-assault.” The apprehending officers in the present case undoubtedly did not show that the immediate physical inventory and photograph posed a threat on the safety and security of the police officers, or of the confiscated dangerous substance nor did they offer any other acceptable reason for not complying strictly with the requirement of immediate inventory and photograph at the place of arrest. Moreover, it is interesting to note that when the apprehending officers conducted the physical inventory and photographing in their office, the presence of all the required witnesses was not secured. Only a representative from the media and an elected public official were present during the physical inventory and photographing at the PDEA Office. No member of the DOJ appeared and no legitimate excuse was given to justify his/her absence. The members of the entrapment team have not made the slightest attempt to show that they exerted honest-to-goodness efforts to obtain the presence of a representative from the DOJ who will attest to the physical inventory and photographing in accordance with the mandated procedure.

²⁸ G.R. No. 231989, September 4, 2018.

The case of *People v. Ramos*²⁹ is explicit:

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. (Citations omitted; emphases and underscoring in the original)

The prosecution was glaringly mum about the lack of a representative from the DOJ during the physical inventory and photographing of the seized items. It displayed indifference to the three-witness rule of R.A. No. 9165 and discounted the presence of one of the required witnesses on the mistaken belief that it will not adversely affect its case. This procedural lapse, albeit minor, was not acknowledged and, worse, not justified by the apprehending officers as required by the law. To the mind of the Court, the prosecution did not touch on this matter because the police officers did not really endeavor to contact and coordinate with a DOJ representative in the hope that they can readily invoke “substantial compliance with the law.”

The chain of custody rule, however, admits of an exception which is found in the saving clause introduced in Section 21(a), Article II of the IRR of R.A. No. 9165. Less than strict compliance with the guidelines stated in Section 21 does not necessarily render void and invalid the confiscation and custody over the evidence obtained. The saving clause is set in motion when these requisites are satisfied: 1) the existence of justifiable grounds; and 2) the integrity and evidentiary value of the seized items are properly preserved by the police officers.³⁰

²⁹ G.R. No. 233744, February 28, 2018.

³⁰ *People v. Fatallo*, G.R. No. 218805, November 7, 2018.

The first requirement enjoins the prosecution to identify and concede the lapses of the buy[-]bust team and thereafter give a justifiable and credible explanation therefor. Records show that the only explanation given by the prosecution is the apprehending officers' departure from the rule on the marking requirement. Citing security and safety reasons, it maintained that the marking and physical inventory were done in the PDEA Office because it was already nighttime and that people already started to gather around the place of arrest. The justification does not persuade as it was never substantiated or corroborated by evidence. The excuse would have been acceptable had the apprehending officers elaborated how the time of seizure and the gathering of people challenged their safety and security. They should have at least shown the concrete steps taken to secure the presence of all three witnesses signaling their good faith and intent to comply with the law.

Anent the second requirement, the prosecution was not able to prove that the integrity and evidentiary value of the seized items remained intact from the time of confiscation, marking, submission to the laboratory for examination, and presentation in court. The marking of the seized items was conducted at the PDEA Office for security reasons which was never substantiated nor proven as a fact. The marking was not executed at the place of confiscation even if IO1 Labajo could have easily placed his initials knowing fully well that there were back-up officers to respond to the scene. The absence of the three required witnesses at the place of seizure for the immediate physical inventory and photographing and the lack of a DOJ representative during the actual physical inventory and photographing without offering a credible justification created another gap in the chain of custody. Considering the miniscule amount of the confiscated illegal drugs involved, rigid compliance with Section 21 of R.A. No. 9165 is expected from the apprehending officers. As aptly held in *People v. Plaza*,³¹ “[buy bust] teams should be more meticulous in complying with Section 21 of R.A. No. 9165 to preserve the integrity of the seized *shabu* most especially where the weight of the seized item is a miniscule amount that can be easily planted and tampered with.”

There being no plausible reason for the apprehending officers' non-compliance with Section 21 of R.A. No. 9165, Tampan must perforce be acquitted.

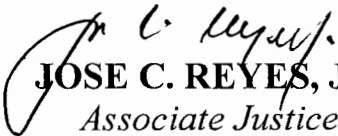
WHEREFORE, premises considered, the appeal is hereby **GRANTED**. The Decision dated April 29, 2015 of the Court of Appeals-Cebu City in CA-G.R. [CEB] CR-HC No. 01768 is hereby **REVERSED** and **SET ASIDE**. Accused-appellant **EDITHA TAMPAN** is **ACQUITTED** for failure of the prosecution to prove her

³¹ G.R. No. 235467, August 20, 2018.

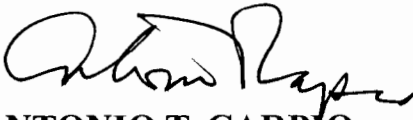
RELEASED from detention, unless she is confined for any other lawful cause. Let an entry of final judgment be issued immediately.

Let a copy of this Decision be furnished the Director of the Bureau of Corrections, for immediate implementation. Said Director is ordered to report the action he has taken to this Court within five days from receipt of this Decision.

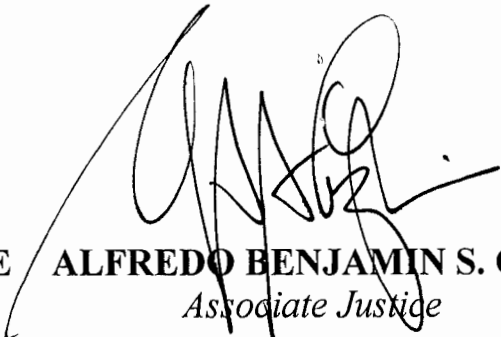
SO ORDERED.


JOSE C. REYES, JR.
Associate Justice

WE CONCUR:


ANTONIO T. CARPIO
Senior Associate Justice
Chairperson


ESTELA M. PERLAS-BERNABE
Associate Justice


ALFREDO BENJAMIN S. CAGUIOA
Associate Justice


RAMON PAUL L. HERNANDO
Associate Justice

ATTESTATION

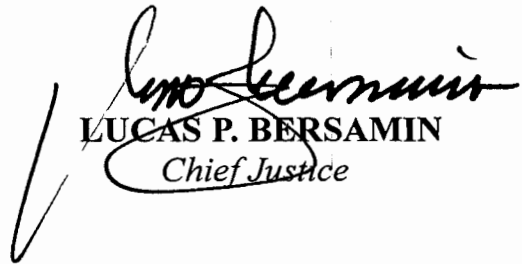
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



ANTONIO T. CARPIO
Senior Associate Justice
Chairperson, Second Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division 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.



LUCAS P. BERSAMIN
Chief Justice

Y