



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. 228881

Present:

- versus -

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

DONDON GUERRERO y ELING,
 Accused-Appellant.

Promulgated:

06 FEB 2019

x-----*[Signature]*-----x

DECISION

CAGUIOA, J.:

Before the Court is an ordinary appeal¹ filed by Dondon Guerrero y Eling (Guerrero) assailing the Decision² dated May 27, 2016 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 07423, which affirmed the Decision³ dated March 10, 2015 of the Regional Trial Court of La Union, San Fernando City, Branch 29 (RTC) in Criminal Case No. 9984, finding Guerrero guilty beyond reasonable doubt of violating Section 5, Article II of Republic Act No. (RA) 9165,⁴ otherwise known as “The Comprehensive Dangerous Drugs Act of 2002,” as amended.

The Facts

Guerrero was charged with violation of Section 5, Article II of RA 9165. The accusatory portion of the Information⁵ reads as follows:

* On wellness leave.

** Designated additional Member per Special Order No. 2630 dated December 18, 2018.

¹ See Notice of Appeal dated June 21, 2016, *rollo*, pp. 21-23.

² *Rollo*, pp. 2-20. Penned by Associate Justice Magdangal M. De Leon with Associate Justices Jhosep Y. Lopez and Henri Jean Paul B. Inting, concurring.

³ *CA rollo*, pp. 65-71. Penned by Presiding Judge Asuncion F. Mandia.

⁴ 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” (2002).

⁵ Records, p. 1.

[Handwritten signature]

That on or about the 31st day of August, 2013, in the City of San Fernando, (La Union), Philippines, and within the jurisdiction of this Honorable Court, the above named accused, conspiring, confederating, and mutually helping one another did then and there willfully, unlawfully, and feloniously for and in consideration of a sum of money in the amount of five thousand pesos(P5,000.00), Philippine currency, sell and deliver methamphetamine hydrochloride, commonly known as “shabu”, a dangerous drug, with total weight of .1953 gram to SPO1 Arnulfo Rosario who posed as [a] buyer thereof using five pieces of one-thousand peso bill boodle money with serial numbers TE964331, TE964331, JU147643, JU147643, and NP429483, without first securing the necessary permit, license or prescription from the proper government agency or authority. CONTRARY TO LAW.⁶

Upon arraignment, Guerrero pleaded not guilty to the crime charged. Thereafter, trial ensued. The prosecution’s version, summarized by the CA is as follows:

The prosecution called on Maximiano Valentin as its first witness. However, his testimony was dispensed with after the defense admitted the facts he will be testifying on. Both parties stipulated that (1) he is the resident Chemist of PDEA Region 1; (2) the Chemistry Report No. PDEARO1-DD013-0022 exists and was duly executed; and (3) the specimen subject of the examination conducted by the witness is the same specimen turned over to him by SPO1 Arnulfo Rosario.

The circumstances of how the buy bust operation was conducted were culled from the testimonies of SPO1 Arnulfo Rosario and SPO1 Grant Bitabit who were members of the Regional Anti-Illegal Drug Special Operations Task Group (RAIDSOTG). Their testimonies show that on August 31, 2013, at about 4:30 p.m., a confidential informant (“CI”) came to the office of RAIDSOTG Region I and reported to SPO1 Rosario that appellant and Marian Dagium were looking for buyers of shabu. SPO1 Rosario reported this to PO3 Allan Abang, their team leader, who in turn ordered SPO1 Rosario to transact with appellant and Marian Dagium. Using the CI’s cellphone, SPO1 Rosario contacted appellant and informed him that he was interested in buying Php5,000.00 worth of shabu. They agreed to meet near the RITZ Apartelle.

Thereafter, PO3 Abang coordinated with the PDEA. Members of the PDEA and PNP San Fernando City arrived at the office of RAIDSOTG for a briefing on a joint operation against appellant and Marian Dagium. In this meeting, SPO1 Rosario was designated as the poseur buyer, SPO1 Bitabit as the arresting officer while the rest of the team were to serve as back up. SPO1 Rosario prepared the buy-bust money consisting of five pieces of Php1,000.00 bills marked with his initials “AMR[.]”

Around 5:30 to 6:00 p.m., the team proceeded to the RITZ Apartelle in Canaoay, San Fernando City to familiarize themselves with the place and returned to the RAIDSOTG office thereafter. The CI then contacted appellant again to confirm the time of their meeting. Appellant informed the CI that he’s already on his way and so the back-up team went to RITZ Apartelle in a Toyota Revo, positioning themselves on the side of

⁶ Id.



the road in front of the apartelle. On the other hand, SPO1 Rosario and the CI rode a tricycle to the apartelle at around 12:20 am of September 1, 2013 and positioned themselves in front of RITZ Apartelle.

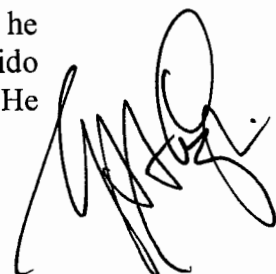
The CI informed appellant that they were already in front of the apartelle. Four individuals came out from the building: appellant, Melchor Lorenzo, Jerry Salingbay and Marian Dagium. Appellant approached SPO1 Rosario and the CI. Appellant then asked SPO1 Rosario if he has the money and SPO1 Rosario likewise asked if appellant has the "stuff" with him. Appellant answered in the affirmative and instructed Melchor Lorenzo to receive the marked money. Melchor Lorenzo took the marked money while appellant handed over to SPO1 Rosario a transparent plastic sachet containing white crystalline substance. SPO1 Rosario confirmed that the contents of the sachet as shabu and then executed a pre-arranged signal by lighting a cigarette. This signal prompted arresting officer SPO1 Bitabit and the rest of the back-up team to approach the group and arrest the four individuals, including appellant.

SPO1 Bitabit apprised appellant and his three companions of their constitutional rights, after which, each person under arrest was frisked, resulting in the seizure of another plastic sachet from the wallet of Jerry Salingbay and another sachet from Marian Dagium. The marked money was recovered from Melchor Lorenzo. The recovered items were marked by SPO1 Rosario in the place of arrest, in the presence of other members of the team, Dominador Dacanay of DZNL and barangay official Americo Flores of Canaoay. However, because it was dark in that place, the team leader ordered that they continue the inventory in their office at Camp Florendo Parian, San Fernando City.

The team, together with appellant and his three other companions, went to Camp Florendo, Parian, San Fernando City. In their office, the inventory of the seized items was continued. Pictures were taken during the inventory. After the Certificate of Inventory was signed, SPO1 Rosario prepared the Request for Laboratory Examination which was signed by their Action Officer P/Supt. Bersola. SPO1 Rosario delivered the request and the three plastic sachets of suspected shabu which were received by the Forensic Chemist of PDEA Maximiano Valentin.

The laboratory examination confirmed that the three sachets contained methamphetamine hydrochloride or shabu. The sachet that SPO1 Rosario received from appellant was marked with "A-AMR[.]" SPO1 Bitabit and SPO1 Rosario positively identified appellant as the person who gave SPO1 Rosario the sachet of shabu while Melchor Lorenzo was identified as the person who received the mark[ed] money.

The prosecution also presented Americo Flores, a barangay kagawad of Barangay Canaoay, San Fernando City. He testified that in the early morning of September 1, 2013, he was at home when a PDEA member called him to witness the marking of shabu, cellphones and marked money which were confiscated from a person under arrest. Around 12:20 a.m. of September 1, 2013, Americo Flores went to the RITZ Apartelle and he was shown three sachets of shabu, money bills and cellphones. There was also a media representative with them. When Americo Flores was asked to identify the persons under arrest whom he saw the morning of September 1, 2013, he pointed at Bienvenido Arquitola (an accused from a different case) and at Melchor Lorenzo. He



confirmed that they had to continue the marking at the office because it was a bit dark in the place of arrest. Americo Flores identified the Receipt/Inventory of Property Seized which he signed as well as his signature thereon. He also identified the three plastic sachets which he claims to have been marked in his presence. He explained that he can identify the said sachets because of the markings placed thereon showing the date.

Other pieces of evidence submitted by the prosecution include: (1) Request for Laboratory Examination; (2) Chemistry Report; (3) Receipt/Inventory of Property Seized; (4) Photographs (taken during inventory); (5) Five pieces of marked (boodle) money; and (6) one heat sealed sachet containing shabu which was marked "A-AMR[.]"⁷ (Emphasis omitted)

On the other hand, the version of the defense, also summarized by the CA, is as follows:

The defense presented appellant, Melchor Lorenzo, and Jonathan Galvan, who is allegedly an employee of the RITZ Apartelle[,] as witnesses.

According to appellant's testimony on August 31, 2013, around 4:30 p.m., he was in front of the RITZ Apartelle with Marian Dagium, waiting for a tricycle. Dexter Ramos, Oga, and alias "Ittip[.]" who were detainees at the City Jail, arrived on board a tricycle. Dexter Ramos pointed a knife at appellant's back and asked him to ride the tricycle while Marian Dagium was dragged by Oga and forced her to board the tricycle as well. Melchor Lorenzo and Jerry Salingbay were left at the RITZ Apartelle.

Appellant was brought to a basketball court in Barangay Canaoy where he met PO3 Abang, SPO1 Rosario and SPO1 Bitabit. After Dexter Ramos alighted from the tricycle, SPO1 Bitabit rode the tricycle and brought them to RAIDSOTG. PO3 Abang forced appellant and Marian Dagium to admit that the shabu that was shown to them were theirs. Thereafter, appellant was brought to a restroom by a police officer who boxed him in his stomach several times. PO3 Abang then told him "palit ulo kami" so that he may be released and asked appellant if he had other companions. Appellant answered in the affirmative so they returned to the apartelle with SPO1 Rosario, SPO1 Bitabit and two other policemen.

At the RITZ Apartelle, PO3 Abang made appellant knock on the door of Melchor Lorenzo's room, who in turn opened the door. PO3 Abang, PO1 Rosario and PO1 Bitabit barged into the room and asked the occupants to bring out their wallets. The police officers also turned over the beds and conducted a search but failed to recover anything.

At 7:30 p.m., appellant, Marian Dagium and Melchor Lorenzo were brought to RAIDSOTG. PO3 Abang brought out their cellphones, wallets and two sachets of shabu and asked them if they were his. Appellant answered in the negative. By 11:30 p.m., appellant, Marian Dagium, Melchor Lorenzo and Jerry Salingbay were brought back to the front of the RITZ Apartelle. The police officers then brought out the shabu

⁷ *Rollo*, pp. 4-7.

and took pictures [sic] their pictures with the seized items. This was done without a media representative or a barangay official.

Thereafter, appellant and his companions were brought to the Marcos Building where they underwent medical examination. They were then brought to the Tangui Police Station and stayed there until the morning of September 1, 2013. At 9:30 a.m., PO3 Abang, SPO1 Rosario and SPO1 Bitabit and two other persons took them to the RAIDSOTG office. Around 10:30 a.m., two males arrived and the police officers brought out the pieces of evidence and took pictures of the barangay kagawad signing a document. Appellant does not know what the document contains because he was not furnished a copy. Thereafter, during inquest, appellant and his companions were assisted by a PAO lawyer. While they informed her of their story, they were told to forego the filing of counter-affidavits because even if they execute said affidavits, a case shall still be filed against them.

During cross-examination, appellant also testified that Dexter Ramos was detained at the City Jail for physical injuries while Oga was detained for violation of RA 9165. Appellant narrated that he only met Dexter Ramos, Oga and Ittip for the first time on August 31, 2013. When he asked Dexter Ramos why he pointed a knife at him, the former answered that it was because PO3 Abang told him that he will be detained if he is unable to get another person as a “palit ulo[.]” Appellant also told the court that he did not tell the doctor who examined him that he had been boxed in the stomach and furthermore affirmed that he did not file any case against the persons whom he claims to have falsely accused him.

Appellant’s co-accused, Melchor Lorenzo, also took the witness stand. He confirmed the narration of appellant and added the events and circumstances which brought them to the RITZ Apartelle in the afternoon of August 31, 2013. He testified that on said date, he and appellant (his nephew) went to eat at the market in San Ferna[n]do City, after which they fetched Jerry Salingbay at the plaza. The three of them went to RITZ Apartelle and checked in at Rm. 7 where they had a drinking spree. At about 3:30 p.m., Marian Dagium joined them. At 4:30 p.m.[.] Marian Dagium and appellant left to buy food but when they returned to the room at 6:30 p.m., they were already handcuffed and accompanied by police officers. Melcho[r] Lorenzo’s account of the events that followed were the same as appellant’s recollection.

The defense also presented Jonathan Galvan, a roomboy of the RITZ Apartelle on duty in the afternoon of August 31, 2013. He testified that appellant and his two companions occupied two rooms in the apartelle. At about 4:30 p.m., while he was at the counter, he saw appellant accompanied by a woman, exit the apartelle. Appellant, who was accompanied by four persons, returned to the apartelle around 6:00 p.m. They went inside a room and after about twenty minutes, appellant and his companions went out of the room, with appellant already in handcuffs. During cross-examination, Jonathan Galvan also confirmed that it was only appellant that he saw in handcuffs. He did not notice that any other person in the group was restrained. Thereafter, appellant with his companions left the apartelle and boarded a vehicle.⁸

⁸ Id. at 7-10.

Ruling of the RTC

After trial on the merits, in its Decision dated March 10, 2015, the RTC convicted Guerrero of the crime charged. The RTC found the testimonies of the prosecution witnesses more credible.⁹ It ruled that the evidence on record sufficiently established the presence of the elements of illegal sale of dangerous drugs and that the chain of custody of *shabu* was likewise duly established.¹⁰ The dispositive portion of the said Decision reads:

WHEREFORE, premises duly considered, this Court finds the accused Dondon Guerrero y Eling, **GUILTY** beyond reasonable doubt of the crime of violation of Section 5, Article II of R.A. 9165 and is hereby sentenced to suffer the penalty of Life Imprisonment and to pay a fine of P500,000. The period of his preventive imprisonment shall be credited in his favor. The accused Melchor Lorenzo is **ACQUITTED** on the ground of reasonable doubt. He is therefore ordered released immediately from the custody of the City Jail Warden unless detained for some other lawful cause.

The *shabu* subject of the case is confiscated in favor of the government and is ordered transmitted to the PDEA for proper disposition.

SO ORDERED.¹¹

Aggrieved, Guerrero appealed to the CA.

Ruling of the CA

In the questioned Decision dated May 27, 2016, the CA affirmed the RTC's conviction of Guerrero, holding that the prosecution was able to prove the elements of the crime charged. SPO1 Arnulfo Rosario (SPO1 Rosario) positively identified Guerrero as the seller, with himself acting as the poseur buyer.¹² The sachet of *shabu*, which tested positive for methamphetamine hydrochloride, and the marked money were identified and submitted in evidence.¹³

The CA also declared that there was substantial compliance in ensuring the integrity of the drug seized from Guerrero was preserved. The CA explained:

We are not convinced that the commingling of the three sachets of drugs has compromised the identity of the corpus delicti. In ruling on this matter, We are constrained to apply the rule on chain of custody based on Section 21 of RA 9165, its Implementing Rules and prevailing jurisprudence on the matter. The prevailing rule is that failure to strictly comply with the requirements of Section 21 paragraph 1 under justifiable

⁹ CA *rollo*, p. 69.

¹⁰ Id. at 70.

¹¹ Id. at 71.

¹² *Rollo*, p. 18.

¹³ Id.

grounds shall not render the seizure and custody over confiscated items invalid for as long as the integrity and evidentiary value of the seized items have been properly preserved by the apprehending officer or team. In the instant case, even with the alleged possibility of commingling of the three sachets of drugs, the corpus delicti was still presented in court and validly identified by SPO1 Rosario as the one he seized from appellant during the buy-bust operation. It was identified by its marking "A-AMR" as the subject of the sale and was marked immediately after being confiscated from appellant.¹⁴

For that reason, the CA disposed as follows:

WHEREFORE, the appeal is **DISMISSED**. The *Decision* of the Regional Trial Court, Branch 39, San Fernando City, La Union dated March 10, 2015, which found appellant guilty beyond reasonable doubt of illegal sale of dangerous drugs under Section 5 of RA 9165, as amended, is hereby **AFFIRMED**.

SO ORDERED.¹⁵

Hence, the instant appeal.

Issue

For resolution of the Court is the issue of whether the RTC and the CA erred in convicting Guerrero of the crime charged.

The Court's Ruling

The appeal is meritorious. The Court acquits Guerrero for failure of the prosecution to prove his guilt beyond reasonable doubt.

Guerrero was charged with illegal sale of dangerous drugs, defined and penalized under Section 5, Article II of RA 9165. For a successful prosecution for the crime of illegal sale of drugs, the following must be proven: (a) the identities of the buyer, seller, object, and consideration; and (b) the delivery of the thing sold and the payment for it.¹⁶

The confiscated drug constitutes the very *corpus delicti* of the offense¹⁷ and the fact of its existence is vital to sustain a judgment of conviction.¹⁸ It is essential, therefore, that the identity and integrity of the seized drugs be established with moral certainty.¹⁹ The prosecution must prove, beyond reasonable doubt, that the substance seized from the accused

¹⁴ Id. at 17.

¹⁵ Id. at 19-20.

¹⁶ *People v. Tomawis*, G.R. No. 228890, April 18, 2018, pp. 5-6, citing *People v. Goco*, 797 Phil. 433, 442 (2016).

¹⁷ *People v. Supat*, G.R. No. 217027, June 6, 2018, p. 6, citing *People v. Sagana*, G.R. No. 208471, August 2, 2017, 834 SCRA 225, 240.

¹⁸ Id., citing *Derilo v. People*, 784 Phil. 679, 686 (2016).

¹⁹ Id. at 6-7, citing *People v. Alvaro*, G.R. No. 225596, January 10, 2018, p. 6.

is exactly the same substance offered in court as proof of the crime.²⁰ Each link to the chain of custody must be accounted for.²¹

This resonates even more in buy-bust operations because "by the very nature of anti-narcotics operations, the need for entrapment procedures, the use of shady characters as informants, the ease with which sticks of marijuana or grams of heroin can be planted in pockets or hands of unsuspecting provincial hicks, and the secrecy that inevitably shrouds all drug deals, the possibility of abuse is great."²² Thus, while it is true that a buy-bust operation is a legally effective and proven procedure, sanctioned by law, for apprehending drug peddlers and distributors,²³ the law nevertheless also requires **strict** compliance with procedures laid down by it to ensure that rights are safeguarded.

In this connection, Section 21, Article II of RA 9165 and its Implementing Rules and Regulations (IRR), the applicable law at the time of the commission of the alleged crime, lays down the procedure that police operatives must follow to maintain the integrity of the confiscated drugs used as evidence. The provision requires: (1) that the seized items be inventoried and photographed immediately after seizure or confiscation; (2) that the physical inventory and photographing must be done in the presence of (a) the accused or his/her representative or counsel, (b) an elected public official, (c) a representative from the media, and (d) a representative from the Department of Justice (DOJ), all of whom shall be required to sign the copies of the inventory and be given a copy thereof; and (3) that such conduct of the physical inventory and photograph shall be done at the (a) place where the search warrant is served; (b) nearest police station; or (c) nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizure.²⁴

Section 21 of RA 9165 requires the apprehending team to conduct a physical inventory of the seized items and the photographing of the same **immediately after seizure and confiscation**. The said inventory must be done **in the presence of the aforementioned required witnesses**, all of whom 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 were intended by the law to be made immediately after, or at the place of apprehension.²⁵ It is only when the same is not practicable that the IRR of RA 9165 allows the inventory and photographing to be done as soon as the buy-bust team reaches the nearest police station or the nearest office of the apprehending

²⁰ Id. at 7.

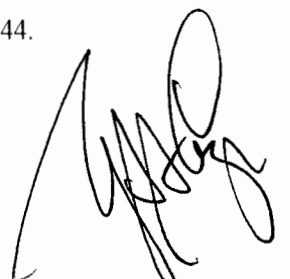
²¹ Id., citing *People v. Viterbo*, 793 Phil. 593, 601 (2014).

²² Id., citing *People v. Saragena*, G.R. No. 210677, August 23, 2017, 837 SCRA 529, 543-544.

²³ *People v. Mantalaba*, 669 Phil. 461, 471 (2011).

²⁴ *People v. Supat*, supra note 17.

²⁵ Id. at 9.



officer/team.²⁶ In this connection, this also means that the three required witnesses should already be physically present at the time of apprehension — **a requirement that can easily be complied with by the buy-bust team considering that the buy-bust operation is, by its nature, a planned activity.**²⁷ Verily, a buy-bust team normally has enough time to gather and bring with them the said witnesses.²⁸

Moreover, while the IRR allows alternative places for the conduct of the inventory and photographing of the seized drugs, the requirement of having the three required witnesses to be physically present at the time or near the place of apprehension is not dispensed with.²⁹ 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 witnesses is most needed, as it is their presence at the time of seizure and confiscation that would insulate against the police practice of planting evidence.³⁰

The buy-bust team failed to comply with the mandatory requirements under Section 21.

In the present case, the records clearly show that the physical inventory and photographing were not made before the three required witnesses. The Certificate of Inventory³¹ dated September 1, 2013 was signed only by Americo Flores (Flores), the barangay kagawad, and Dominador Dacanay (Dacanay), the representative from the media. The two witnesses present — a barangay official and a media representative — do not suffice in the face of the explicit requirement of the law that mandates the presence of three witnesses. Neither did the police officers or the prosecution — during the trial — offer any viable or acceptable explanation for their deviation from the law. As SPO1 Rosario, part of the apprehending team, himself testified:

[Cross-examination by Atty. Armi-lynn Agtarap:]

Q: You received the information at around 4:30 in the afternoon of August 31, 2013?

A: Yes ma'am.

Q: Until 4:30 until such time that you went at the area of the transaction at 12:30 A.M. of September 1, 2013, none of you coordinated with the DOJ?

A: Yes ma'am.

²⁶ IRR of RA 9165, Article II, Section 21(a).

²⁷ *People v. Supat*, supra note 17, at 10.

²⁸ Id.

²⁹ Id.

³⁰ Id.

³¹ Records, pp. 19-20.

x x x x

[Re-direct examination by Pros. Alexander Andres:]

Q: Why did you not coordinate with any personnel of the DOJ to act as your witness during the conduct of the inventory?

A: Our team leader will answer that sir, I was only designated as the poseur-buyer.

Q: You mean to say that it was not you who was responsible with the coordination with the supposed witnesses in the conduct of inventory?

A: We coordinated with the PDEA.³²

Of equal importance, the testimony of Brgy. Kagawad Flores reveals that he was not yet at the place of apprehension when the arrest of Guerrero happened. His testimony shows that he was at the place of apprehension after the arrest had already allegedly been made, and to witness the marking of items that had already been allegedly confiscated.

Q: You don't know also if the persons you identified earlier are the persons who were persons [sic] arrested on September 1, 2013 at around 12:20 A.M. were really arrested on that particular time.

A: Yes, sir.

x x x x

Q: You were present when SPO1 Rosario was making the markings on those confiscated items from the persons arrested during that time?

A: Yes ma'am.³³

Evidently, the manner on how the buy-bust operation was conducted creates doubt as to the source, identity, and integrity of the seized drug. Nowhere in the records does it show that the apprehending officers have any difficulty contacting a DOJ representative. As a matter of fact, they had sufficient time to find a DOJ representative given that the information regarding the illegal transaction of Guerrero was known to them as early as 4:30 p.m. of August 31, 2013 and the buy-bust allegedly happened at midnight.

It bears emphasis that the presence of the required witnesses at the time of the inventory is mandatory, and that the law imposes the said requirement because their presence serves an essential purpose. In *People v. Tomawis*,³⁴ the Court elucidated on the purpose of the law in mandating the presence of the required witnesses as follows:

³² TSN, April 7, 2014, p. 10.

³³ TSN, July 14, 2014, p. 10-11.

³⁴ Supra note 16.



The presence of the witnesses from the DOJ, media, and from public elective office is necessary to protect against the possibility of planting, contamination, or loss of the seized drug. Using the language of the Court in *People v. Mendoza*,³⁵ without the *insulating presence* of the representative from the media or the DOJ and any elected public official during the seizure and marking of the drugs, 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 subject sachet that was evidence of the *corpus delicti*, and thus adversely affected the trustworthiness of the incrimination of the accused.

The presence of the three witnesses must be secured not only during the inventory but more importantly **at the time of the warrantless arrest**. It is at this point in which the presence of the three witnesses is most needed, as it is their presence at the time of seizure and confiscation that would belie any doubt as to the source, identity, and integrity of the seized drug. If the buy-bust operation is legitimately conducted, the presence of the insulating witnesses would also controvert the usual defense of frame-up as the witnesses would be able to testify that the buy-bust operation and inventory of the seized drugs were done in their presence in accordance with Section 21 of RA 9165.

The practice of police operatives of not bringing to the intended place of arrest the three witnesses, when they could easily do so — and “calling them in” to the place of inventory to witness the inventory and photographing of the drugs only after the buy-bust operation has already been finished — does not achieve the purpose of the law in having these witnesses prevent or insulate against the planting of drugs.

To restate, the presence of the three witnesses at the time of seizure and confiscation of the drugs must be secured and complied with at the time of the warrantless arrest; such that they are required to be at or near the intended place of the arrest so that they can be ready to witness the inventory and photographing of the seized and confiscated drugs “immediately after seizure and confiscation.”³⁶ (Emphasis supplied and underscoring in the original)

All told, even if the Court were to believe the version of the prosecution, the buy-bust team committed patent procedural lapses in the conduct of the seizure, initial custody, and handling of the seized drug — which thus created reasonable doubt as to the identity and integrity of the drug and, consequently, reasonable doubt as to the guilt of Guerrero.

The prosecution failed to prove justifiable ground for non-compliance.

³⁵ 736 Phil. 749 (2014).

³⁶ *People v. Tomawis*, supra note 16, at 11-12.



While there are cases where the Court had ruled that the failure of the apprehending team to strictly comply with the procedure laid out in Section 21 of RA 9165 does not *ipso facto* render the seizure and custody over the items void and invalid, this is with the caveat that the prosecution still needs to satisfactorily prove that: (a) there is justifiable ground for non-compliance; and (b) the integrity and evidentiary value of the seized items are properly preserved.³⁷ The Court has **repeatedly** emphasized that the prosecution should explain the reasons behind the procedural lapses.³⁸

As the Court held in *People v. De Guzman*,³⁹ “[t]he justifiable ground for non-compliance must be proven as a fact. The court cannot presume what these grounds are or that they even exist.”⁴⁰ The prosecution has the burden of (1) proving their compliance with Section 21, RA 9165, and (2) providing a sufficient explanation in case of non-compliance. As the Court *en banc* unanimously held in the recent case of *People v. Lim*,⁴¹

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.⁴² (Emphasis in the original and underscoring supplied)

In this case, the prosecution neither recognized, much less tried to justify, its deviation from the procedure contained in Section 21, RA 9165.

³⁷ *People v. Ceralde*, G.R. No. 228894, August 7, 2017, 834 SCRA 613, 625.

³⁸ *People v. Dela Victoria*, G.R. No. 233325, April 16, 2018, p. 6.; *People v. Descalso*, G.R. No. 230065, March 14, 2018, p. 8; *People v. Año*, G.R. No. 230070, March 14, 2018, p. 6; *People v. Lumaya*, G.R. No. 231983, March 7, 2018, p. 8; *People v. Sagauinit*, G.R. No. 231050, February 28, 2018, p. 7; *People v. Ramos*, G.R. No. 233744, February 28, 2018, p. 9; *People v. Manansala*, G.R. No. 229092, February 21, 2018, p. 7; *People v. Dionisio*, G.R. No. 229512, January 31, 2018, p. 9; *People v. Miranda*, G.R. No. 229671, January 31, 2018, p. 7; *People v. Mamangon*, G.R. No. 229102, January 29, 2018, p. 7; *People v. Villanueva*, G.R. No. 231792, January 29, 2018, p. 7; *People v. Alvaro*, supra note 19, at 7; *People v. Almorfe*, 631 Phil. 51, 60 (2010).

³⁹ 630 Phil. 637 (2010).

⁴⁰ Id. at 649.

⁴¹ G.R. No. 231989, September 4, 2018.

⁴² Id. at 13, citing *People v. Sipin*, G.R. No. 224290, June 11, 2018, p. 17.



The prosecution did not offer any plausible explanation as to why they did not contact the representative from the DOJ. Breaches of the procedure outlined in Section 21 committed by the police officers, left unacknowledged and unexplained by the State, militate against a finding of guilt beyond reasonable doubt against the accused as the integrity and evidentiary value of the *corpus delicti* had been compromised.⁴³ As the Court explained in *People v. Reyes*,⁴⁴ to warrant the application of this saving mechanism, the prosecution must recognize the lapse or lapses, and justify or explain them, and failure to justify or explain underscored the doubt and suspicion about the integrity of the evidence of the *corpus delicti*.

The Court is not unaware of the drug menace that besets the country and the direct link of certain crimes to drug abuse.⁴⁵ The unrelenting drive of our law enforcers against trafficking and use of illegal drugs and other substance is indeed commendable.⁴⁶ Those who engage in the illicit trade of dangerous drugs and prey on the misguided members of the society, especially the susceptible youth, must be caught and properly prosecuted.⁴⁷ Nonetheless, the Court acknowledges that this campaign against drug addiction is highly susceptible to police abuse and that there have been cases of false arrests and wrongful incriminations.

The Court has recognized, in a number of cases, that law enforcers resort to the practice of planting evidence to extract information from or even to harass civilians.⁴⁸ Thus, to the Court's mind, the allegation of Guerrero that he was a victim of *palit-ulo*, has the ring of truth to it. Nevertheless, even if the Court were to believe the version of the prosecution, the buy-bust team committed patent procedural lapses which thus created reasonable doubt as to the identity and integrity of the drug and, consequently, reasonable doubt as to the guilt of Guerrero.

The overriding consideration is not whether the court doubts the innocence of the accused but whether it entertains a reasonable doubt as to his guilt.⁴⁹ In order to convict an accused, the circumstances of the case must exclude all and every hypothesis consistent with his innocence.⁵⁰ What is required is that there be proof beyond reasonable doubt that the crime was committed and that the accused committed the crime.⁵¹ It is only when the conscience is satisfied that the crime has indeed been committed by the person on trial that the judgment will be for conviction.⁵² In light of this, Guerrero must perforce be acquitted.

⁴³ See *People v. Sumili*, 753 Phil. 342, 352 (2015).

⁴⁴ 797 Phil. 671, 690 (2016).

⁴⁵ *People v. Gatlabayan*, 669 Phil. 240, 261 (2011).

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *People v. Dela Cruz*, 666 Phil. 593, 610 (2011).

⁴⁹ *People v. Gatlabayan*, supra note 45 at 260.

⁵⁰ *Id.*

⁵¹ *Id.*, citing *People v. Mangat*, 369 Phil. 347, 359 (1999).

⁵² *Id.*

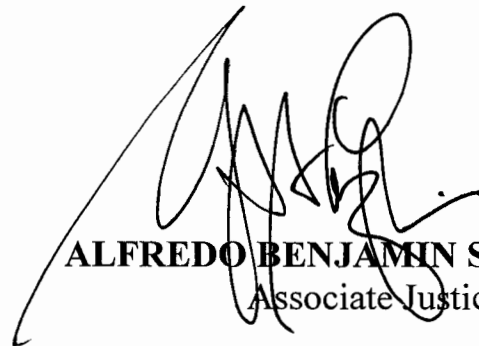


As a final note, the Court reiterates that it is committed to assist the government in its campaign against illegal drugs; however, a conviction can only be obtained after the prosecution discharges its constitutional burden to prove guilt beyond reasonable doubt. Otherwise, this Court is duty-bound to uphold the constitutional right of presumption of innocence.⁵³

WHEREFORE, in view of the foregoing, the appeal is hereby **GRANTED**. The Decision dated May 27, 2016 of the Court of Appeals in CA-G.R. CR-HC No. 07423 is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant Dondon Guerrero y Eling is **ACQUITTED** of the crime charged on the ground of 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 New Bilibid Prison, Muntinlupa City, for immediate implementation. The said Superintendent is **ORDERED to REPORT** to this Court within five (5) days from receipt of this Decision the action he has taken.

SO ORDERED.




ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

WE CONCUR:




ANTONIO T. CARPIO
Associate Justice
Chairperson



ESTELA M. PERLAS-BERNABE
Associate Justice

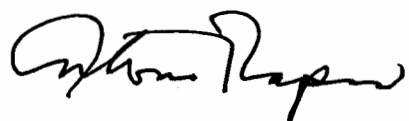
(On wellness leave)
JOSE C. REYES, JR.
Associate Justice

⁵³ See *id.* at 261; *People v. Jugo*, G.R. No. 231792, January 29, 2018, p. 10.


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
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

