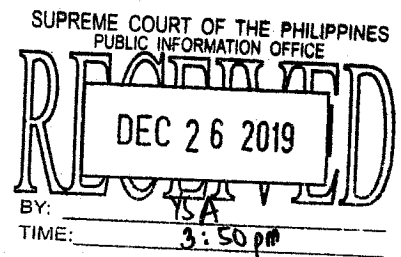




Republic of the Philippines
Supreme Court
Manila



FIRST DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated **December 5, 2019** which reads as follows:*

“G.R. No. 244253 – PEOPLE OF THE PHILIPPINES, plaintiff-appellee, versus ALEX TABUZO y OROSCO @ ALEX, accused-appellant.

Before the Court is an ordinary appeal¹ filed by the accused-appellant Alex Tabuzo y Orosco (Tabuzo) assailing the Decision² dated June 22, 2018 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 09439, which affirmed the Joint Decision³ dated May 17, 2017 of the Regional Trial Court of Valenzuela City, Branch 172 (RTC) in Criminal Cases Nos. 1560-V-15, 1561-V-15, 1562-V-15, finding Tabuzo guilty beyond reasonable doubt of violating Sections 5, 11, and 12, Article II of Republic Act No. (RA) 9165, otherwise known as “The Comprehensive Dangerous Drugs Act of 2002,”⁴ as amended.

The Facts

Three Informations were filed against Tabuzo in this case, the accusatory portions of which read as follows:

CRIMINAL CASE NO. 1560-V-15

That on or about November 14, 2015 in Valenzuela City and within the jurisdiction of this Honorable Court, the above-named accused, for and in consideration of FIVE HUNDRED PESOS (P500.00), consisting of five pieces of one hundred peso

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¹ See Notice of Appeal dated July 13, 2018, *rollo*, pp. 24-25.

² *Rollo*, pp. 3-23. Penned by Associate Justice Ramon R. Garcia with Associate Justices Myra V. Garcia-Fernandez and Germano Francisco D. Legaspi concurring.

³ CA *rollo*, pp. 48-56. Penned by Judge Nancy Rivas-Palmones.

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).

bill with markings BBM and with serial numbers N555473; WM381284; BQ671219; AC465522; and BT462995, without any authority of law, did then and there willfully, unlawfully and feloniously sell to PO3 CONRADO SY II, who posed as buyer, one (1) heat-sealed transparent plastic sachet containing zero point zero five (0.05) [gram] of Methamphetamine Hydrochloride (shabu) marked as AOT-1 11-14-15, with signature, knowing the same to be a dangerous drug.

CONTRARY TO LAW.

CRIMINAL CASE NO. 1561-V-15

That on or about November 14, 2015 in Valenzuela City and within the jurisdiction of this Honorable Court, the above-named accused, without any authority of law, did then and there willfully, unlawfully and feloniously have in his possession and control three (3) heat-sealed transparent plastic [sachets] containing the following, to wit:

- 1.) zero point twelve (0.12) [gram] of Methamphetamine Hydrochloride (Shabu) marked as AOT-2 11-14-15 with signature;
- 2.) one (1) gram of Methamphetamine Hydrochloride (Shabu) marked as AOT-3 11-14-15 with signature, and
- 3.) zero point zero nine (0.09) [gram] of Methamphetamine Hydrochloride (Shabu) marked as AOT-4.11-14-15 with signature

knowing the same to be dangerous drugs.

CONTRARY TO LAW.

CRIMINAL CASE NO. 1562-V-15

That on or about November 14, 2015, in Valenzuela City 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 without authority of law possess one (1) improvised water pipe with markings AOT-5 11-14-15 with signature containing traces of white crystalline substance which was found to be Methamphetamine Hydrochloride (Shabu), a dangerous drugs (*sic*); one cutter knife with markings AOT 6 11-14-15 and one (1) pair of [tweezers] with markings AOT-7 11-14-15 with signature, intended for administering, injecting and introducing Methamphetamine Hydrochloride (Shabu) into the body, knowing them to be [paraphernalia] for dangerous drugs.

CONTRARY TO LAW.⁵

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⁵ Rollo, pp. 5-6.

Upon arraignment, Tabuzo pleaded not guilty to the crimes charged. Thereafter, the cases were tried jointly.⁶ The prosecution's version, as summarized by the CA, is as follows:

On November 13, 2015, at about 3:00 o'clock in the afternoon, a confidential informant reported to the District Anti-Illegal Drug Special Operation Task Group (DAID-SOTG) of the Northern Police District the illegal drug trade activity of appellant at Brgy. Ugong, Valenzuela City. Immediately thereafter, Police Chief Inspector Ronald T. Perilla, ordered the formation of a buy-bust team to entrap appellant, with SPO3 Rodney Esguerra as the team leader and PO3 [Conrado Sy II] as poseur-buyer, together with five (5) other police officers, namely: SPO2 Gumboc, PO3 Buan, PO3 Cahilig, PO3 Jimenez and PO3 Bagain, as back-up operatives. PO3 Reymel Villanueva then prepared a Pre-Operation Report and a Coordination Sheet which were sent to the Philippine Drug Enforcement Agency (PDEA) upon which Control Number 10001-112015-0193 was issued authorizing the buy-bust team to proceed with the operation. During the briefing, designated poseur-buyer PO3 Sy was given five (5) pieces P100 bill with initials "BBM" on each bill to be used as buy-bust money. It was agreed that PO3 Sy would tap the shoulder of the applicant after their transaction.

At around 8:00 o'clock in the evening of the same day, the team left the police station. The team initially convened three (3) blocks away from the target area. PO3 Sy, PO3 Buan and the confidential informant surveyed the target area by car. At about 12:30 a.m. of November 14, 2015, appellant showed up at the target area. The confidential informant pointed to a man wearing white shirt and black shorts saying, "*Yan si Alex, maghihintay yan ng parokyano.*" Thereafter, they notified their companions about it after which the entire team proceeded to the target area.

As PO3 Sy and the confidential informant walked towards the house of appellant, PO3 Buan strategically positioned himself nearby. The other team members stayed inside the vehicle. Upon seeing the confidential informant and PO3 Sy, appellant immediately approached them. The confidential informant introduced PO3 Sy to appellant saying, "*Pare, barkada ko, iiskor*". Appellant asked PO3 Sy, "*Magkano iiskorin mo?*" PO3 Sy answered that he was going to buy worth P500.00 of *shabu*. Appellant went inside the house and brought out a white cellphone box. PO3 Sy gave the five (5) pieces P100 bill to appellant who placed it inside the box and, at the same time, took out therefrom one (1) small plastic sachet containing white crystalline substance suspected to be *shabu* which he handed to PO3 Sy. The latter immediately executed the pre-arranged signal by tapping the shoulder of the appellant. Seeing this, PO3 Buan rushed to the crime scene. Appellant attempted to escape so PO3 Sy grabbed

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⁶ Id. at 6.

him in the arm. At that moment, PO3 Sy introduced himself as a police officer. PO3 Buan handcuffed appellant while PO3 Sy confiscated the cellphone box that appellant was holding. Inside the box, several items were found as follows: three (3) small plastic sachets of *shabu*, five (5) pieces P100 bill, an improvised water pipe, a maroon cutter knife and a pair of tweezers. PO3 Sy was about to put the markings on the seized items when appellant ran away to escape. PO3 Buan and the rest of the team chased appellant until he tripped into a manhole where he was eventually apprehended.

PO3 Sy marked the seized items in front of appellant, his relatives and Brgy. Kagawad Vivencio Manero. The plastic sachet bought from appellant was marked as "AOT-1 11-14-15"; the three other plastic sachets of *shabu* as "AOT-2 11-14-15", "AOT-3 11-14-15" and "AOT-4 11-14-15"; the improvised water pipe as "AOT-5 11-14-15"; the maroon cutter knife as "AOT-6 11-14-15"; the pair of tweezers as "AOT-7 11-14-15"; and the cellphone box as "RECOVERED EVIDENCE-11-14-15". Police Investigator SPO2 Cabinta prepared the Inventory Receipt of Confiscated/Seized Drugs which was signed by Brgy. Kagawad Vivencio Manero as witness. Photographs were also taken at the crime scene during the marking of evidence.

A Request for Laboratory Examination was thereafter prepared to determine the presence of any form of dangerous drugs in the specimens seized from appellant. SPO2 Cabinta personally delivered the letter-request and the specimens to the PNP Crime Laboratory Office of the Northern Police District. The items were then received by PO3 Macaraeg who turned over the same to Forensic Chemist Lourdeliza G. Cejes for qualitative examination.

In Chemistry Report No. D-781-15 dated November 14, 20[1]5, Forensic Chemist Cejes found that the plastic sachet appellant sold to PO3 Sy, with the markings "AOT-1 11-14-15" containing zero point zero five (0.05) gram, tested positive for methamphetamine hydrochloride or *shabu*. The three (3) other plastic sachets confiscated from appellant marked as "AOT-2 11-14-15" weighing zero point zero twelve (0.12) gram; "AOT-3 11-14-15" weighing one (1) gram; and "AOT-4 11-14-15" zero point zero nine (0.09) gram, were likewise confirmed positive for *shabu*.⁷

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

Appellant denied the charges against him. At around 6 p.m. of November 13, 2015, he fetched his live-in partner and children at his mother's house in Ugong, Mapulang Lupa, Valenzuela City. Since his live-in partner was then cleaning the nails of a customer,

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⁷ Id. at 7-9.

he went inside the house to look after his children. He saw his stepfather Ruel who seemed to be in a hurry. He then went outside, sat beside his live-in partner and played games on his cellphone. After a few minutes, five (5) male persons in civilian clothings, who turned out to be police officers, arrived asking for the whereabouts of his stepfather. He told them that his stepfather had just left but the police officers did not believe him and continued to look for his stepfather inside his mother's house. When they could not find his stepfather, he was forced to go with them. They boarded him into a vehicle where he saw another person in handcuffs. After some time, they transferred the other person to another vehicle. While he was alone inside the vehicle, PO3 Sy told him, "*Hindi mo ba alam ang laki ng atraso sa akin ng stepfather mo?*" He answered that he did not know anything about it. He was then mauled by police officers while inside the vehicle compelling him to tell the whereabouts of his stepfather. Instead of being immediately placed under detention, he was kept inside the vehicle which roamed around for about two hours. He later learned that he was charged with violations of Sections 5, 11 and 12 of R.A. No. 9165. He, however, admitted on cross-examination, that it was the first time that he met the police officers and he has no personal grudge against them.

Ronalyn Bisca testified that about 6:00 p.m. of November 13, 2015, she, together with appellant and his live-in partner, were outside her house at 3217 Darlucio Compound, Ugong, Valenzuela City. She was having a nail service from appellant's partner when five (5) male persons in civilian clothes arrived asking them if they know a certain Ruel, appellant's stepfather. Appellant answered, "*Kakaalis lang po*". This notwithstanding, the police officers entered the house of appellant's mother to look for Ruel. When the police officers could not find Ruel, they told appellant, "*Ikaw, ikaw ang isasama namin*". They forcibly took appellant and boarded him inside the vehicle. On cross-examination, she was asked whether she reported the incident to the barangay, the media or the People's Law Enforcement Board (PLEB), she, however, answered in the negative.⁸

Ruling of the RTC

After trial on the merits, in its Joint Decision dated May 17, 2017, the RTC convicted Tabuzo of the crime charged. The dispositive portion of the said Decision reads:

WHEREFORE, the court finds the accused ALEX TABUZO y OROSCO, a.k.a "ALEX" guilty beyond reasonable doubt, as principal of the crime of violations of Section 5, 11 and 12 of R.A. 9165, and he is hereby sentenced to suffer the following penalties:

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⁸ Id. at 9-10.

- 1) In Criminal Case No. 1560-V-15 (for Violation of Section 5, Article II, R.A. 9165), accused ALEX TABUZO y OROSCO, a.k.a. "ALEX" is hereby sentenced to suffer the penalty of LIFE IMPRISONMENT and a fine of Five Hundred Thousand Pesos (Php500,000.00);
- 2) In Criminal Case No. 1561-V-15 (for Violation of Section 11 of Article II, R.A. 9165), accused ALEX TABUZO y OROSCO a.k.a. ALEX is hereby sentenced to suffer the indeterminate penalty of imprisonment of twelve (12) years and one (1) day as minimum to fourteen (14) years as maximum and to pay a fine of three hundred thousand pesos (Php300,000.00); and
- 3) In Criminal Case No. 1562-V-15 (for Violation of Section 12, Article II, R.A. 9165), accused ALEX TABUZO y OROSCO a.k.a. "ALEX" is hereby sentenced to suffer the indeterminate penalty of six (6) months and one (1) day to four (4) years and a fine of ten thousand pesos (Php10,000.00).

x x x x

SO ORDERED.⁹

The RTC ruled that the prosecution proved all the essential elements of the crimes charged.¹⁰ It held that, on the basis of the testimonies of the police officers, the prosecution was able to prove that a poseur-buyer was able to buy *shabu* from Tabuzo in consideration of the amount of ₱500.00, and that Tabuzo was able to receive the said money from the poseur-buyer.¹¹ The RTC thus concluded that a sale transaction had indeed taken place.

On the charges of Illegal Possession of Dangerous Drugs and Illegal Possession of Drug Paraphernalia, the RTC likewise relied on the testimonies of the arresting officers that Tabuzo had possession of the seized items when he was apprehended.¹² As regards the arresting officers' compliance with the chain of custody requirement, the RTC simply concluded that "[t]he prosecution also properly established the inventory of the seized items of *shabu* and drug paraphernalia, as well as the chain of custody."¹³

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⁹ CA rollo, p. 56.

¹⁰ Id. at 53.

¹¹ Id.

¹² Id. at 54.

¹³ Id. at 55.

The RTC thus convicted Tabuzo of the crimes charged. Aggrieved, Tabuzo appealed to the CA.

Ruling of the CA

In the questioned Decision dated June 22, 2018, the CA affirmed the RTC's conviction of Tabuzo, holding that the prosecution was able to prove the elements of the crime of Illegal Sale of Dangerous Drugs, namely: (1) the identity of the buyer, as well as the seller, the object, and the consideration of the sale; (2) the delivery of the thing sold and the payment therefor.¹⁴ The CA similarly held that the prosecution was able to establish the elements of the two other crimes charged against Tabuzo — Illegal Possession of Dangerous Drugs and Illegal Possession of Drug Paraphernalia — namely, (1) that the accused was in possession of the prohibited object, (2) that such possession was not authorized by law, and (3) that the accused freely and consciously possessed the said objects.¹⁵ The CA gave credence to the testimonies of the prosecution witnesses as they are police officers presumed to have performed their duties in a regular manner.¹⁶

As regards compliance with Section 21, Article II of the Implementing Rules and Regulations (IRR) of RA 9165, the CA held that:

While the requirements of Section 21, Article II of RA No. 9165 were not strictly complied with in the case at bench, such oversight would not automatically exonerate appellant or render his arrest illegal and the items seized from him inadmissible in evidence. In *People vs. Bontuyan*, the Supreme Court held that a testimony about a perfect chain is not always the standard as it is almost always impossible to obtain an unbroken chain. What is of utmost importance is the preservation of the integrity and the evidentiary value of the seized items. As long as the chain of custody remains unbroken, the guilt of the accused will not be affected. Here, the succession of events established by evidence and the overall handling of the seized items by the police officers all show that the items seized were the same evidence subsequently identified and presented in court.¹⁷

It thus held that, in this case, the evidence of the prosecution established an unbroken chain of custody wherein the integrity and evidentiary value of the specimens were preserved.

Hence, the instant appeal.

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¹⁴ *Rollo*, p. 13.

¹⁵ *Id.* at 14.

¹⁶ *Id.* at 20.

¹⁷ *Id.*

Issue

For resolution of the Court is the issue of whether the RTC and the CA erred in convicting Tabuzo.

The Court's Ruling

The appeal is meritorious.

In cases involving dangerous drugs, the State bears not only the burden of proving the elements of the crimes charged, but also of proving the *corpus delicti* or the body of the crime. In drug cases, the dangerous drug itself is the very *corpus delicti* of the violation of the law.¹⁸ 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,¹⁹ the law nevertheless also requires **strict** compliance with procedures laid down by it to ensure that rights are safeguarded.

In all drugs cases, therefore, compliance with the chain of custody rule is crucial in any prosecution that follows anti-narcotics operation. Chain of custody means the duly recorded authorized movements and custody of seized drugs or controlled chemicals from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction.²⁰ The rule is imperative, as it is essential that the prohibited drug confiscated or recovered from the suspect is the very same substance offered in court as exhibit; and that the identity of said drug is established with the same unwavering exactitude as that required to make a finding of guilt.²¹

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¹⁸ *People v. Guzon*, 719 Phil. 441, 451 (2013).

¹⁹ *People v. Mantalaba*, 669 Phil. 461, 471 (2011).

²⁰ *People v. Guzon*, supra note 18, citing *People v. Dumaplin*, 700 Phil. 737, 747 (2012).

²¹ *Id.*, citing *People v. Remigio*, 700 Phil. 452, 464-465 (2012).

In this connection, Section 21,²² Article II of RA 9165, which was amended by RA 10640²³ in 2014, lays down the procedure that police operatives must follow to maintain the integrity of the confiscated drugs used as evidence.

The said provision requires that: (1) the seized items be inventoried and photographed at the place of seizure or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable; **(2) 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, and (c) a representative of the National Prosecution Service (NPS) or the media;** and (3) **the accused or his/her representative and all of the aforesaid witnesses shall be required to sign the copies of the inventory and be given a copy thereof.**

The strict observance of the aforesaid requirements is a necessity because, the possibility of abuse is great given the very nature of anti-narcotics operations, the need for entrapment procedures, the use of shady characters as informants, the ease with

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²² The said section reads as follows:

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

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

²³ Titled "AN ACT TO FURTHER STRENGTHEN THE ANTI-DRUG CAMPAIGN OF THE GOVERNMENT, AMENDING FOR THE PURPOSE SECTION 21 OF REPUBLIC ACT NO. 9165, OTHERWISE KNOWN AS THE 'COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002'" (2014).

which sticks of marijuana or grams of heroin can be planted in pockets of or hands of unsuspecting provincial hicks, and the secrecy that inevitably shrouds all drug deals.²⁴

Section 21 of RA 9165, as amended by RA 10640, further requires the apprehending team to conduct a physical inventory of the seized items and the photographing of the same **immediately after seizure and confiscation**. To reiterate, the said inventory must be done in the presence of the aforementioned required witness, **all of whom shall be required to sign the copies of the inventory and be given a copy thereof**.

This means that the required witnesses should already be physically present at the time of apprehension of the accused and seizure of the illegal drugs — **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**. Verily, a buy-bust team normally has enough time to gather and bring with it the said witnesses.

It is true that 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. However, 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.²⁵ The Court has **repeatedly** emphasized that the prosecution has the burden of explaining the reasons behind the procedural lapses.²⁶

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²⁴ *People v. Santos, Jr.*, 562 Phil. 458, 471 (2007), citing *People v. Tan*, 401 Phil. 259, 273 (2000).

²⁵ *People v. Ceralde*, G.R. No. 228894, August 7, 2017, 834 SCRA 613, 625.

²⁶ *People v. Dela Victoria*, G.R. No. 233325, April 16, 2018, 861 SCRA 305, 317; *People v. Crispo*, G.R. No. 230065, March 14, 2018, 859 SCRA 356, 372; *People v. Año*, G.R. No. 230070, March 14, 2018, 859 SCRA 380, 392; *People v. Lumaya*, G.R. No. 231983, March 7, 2018, 858 SCRA 114, 128; *People v. Sanchez*, G.R. No. 231383, March 7, 2018, 858 SCRA 94, 106; *People v. Magsano*, G.R. No. 231050, February 28, 2018, 857 SCRA 142, 156; *People v. Ramos*, G.R. No. 233744, February 28, 2018, 857 SCRA 175, 187; *People v. Manansala*, G.R. No. 229092, February 21, 2018, 856 SCRA 359, 372-373; *People v. Paz*, G.R. No. 229512, January 31, 2018, 854 SCRA 23, 37; *People v. Miranda*, G.R. No. 229671, January 31, 2018, 854 SCRA 42, 55; *People v. Mamangon*, G.R. No. 229102, January 29, 2018, 853 SCRA 303, 316; *People v. Jugo*, G.R. No. 231792, January 29, 2018, 853 SCRA 321, 333; *People v. Alvaro*, G.R. No. 225596, January 10, 2018, 850 SCRA 464, 476; *People v. Almorfe*, 631 Phil. 51, 60 (2010).

In the present case, only one of the two required witnesses was present at the time of seizure and apprehension and even during the conduct of the inventory, as testified to by PO3 Conrado Sy (PO3 Sy), the poseur-buyer himself.²⁷

None of the prosecution witnesses offered a version that would contradict the same. Neither did they try to offer an explanation as to why there was no member of the media or a representative of the DOJ in the conduct of the inventory. The prosecution simply stated that no one was available without showing that the police officers exerted earnest efforts to secure the attendance of either of these two witnesses. The prosecution did not also address the issue in its pleadings, and the RTC and the CA instead had to rely only on the presumption that police officers performed their functions in the regular manner to support Tabuzo's conviction.

It bears emphasis that the presence of the required witnesses at the time of the apprehension and inventory is mandatory, and that the law imposes the said requirement because their presence serves an essential purpose. In *People v. Tomawis*,²⁸ the Court elucidated on the purpose of the law in mandating the presence of the required witnesses as follows:

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*,²⁹ 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 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

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²⁷ TSN, April 27, 2016, pp. 8-9.

²⁸ G.R. No. 228890, April 18, 2018, accessed at <<http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64241>>.

²⁹ 736 Phil. 749 (2014).

would also controvert the usual defense of frame-up as the witnesses would be able 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.”³⁰

The apprehending team in this case had more than ample time to comply with the requirements established by law. As the prosecution’s evidence itself established, the apprehending team received the information from the confidential informant around 3:00 p.m. on November 13, 2015. The team then went to the place where the buy-bust operation would be conducted at around 7:00 p.m., and the actual operation happened at around 12:00 midnight, or on November 14, 2015.³¹ The apprehending officers, therefore, could have complied with the requirements of the law had they intended to, as they had a number of hours to secure the attendance of the required witnesses. However, the apprehending officers in this case did not exert even the slightest of efforts to secure the attendance of one of the two required witnesses. Worse, neither the police officers nor the prosecution — during the trial — offered any explanation for their deviation from the law.

It bears stressing that the prosecution has the burden of (1) proving the police officers’ 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 case of *People v. Lim*,³²

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³⁰ *People v. Tomawis*, supra note 28.

³¹ CA rollo, p. 51.

³² G.R. No. 231989, September 4, 2018, accessed at <<http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64400>>.

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.³³

In *People v. Umipang*,³⁴ the Court dealt with the same issue where the police officers involved did not show any genuine effort to secure the attendance of the required witness before the buy-bust operation was executed. In the said case, the Court held:

Indeed, the absence of these representatives during the physical inventory and the marking of the seized items does not *per se* render the confiscated items inadmissible in evidence. However, we take note that, in this case, the SAID-SOTF did not even attempt to contact the *barangay* chairperson or any member of the *barangay* council. There is no indication that they contacted other elected public officials. Neither do the records show whether the police officers tried to get in touch with any DOJ representative. Nor does the SAID-SOTF adduce any justifiable reason for failing to do so — especially considering that it had sufficient time from the moment it received information about the activities of the accused until the time of his arrest.

Thus, we find that there was no genuine and sufficient effort on the part of the apprehending police officers to look for the said representatives pursuant to Section 21(1) of R.A. 9165. **A sheer statement that representatives were unavailable — without so much as an explanation on whether serious attempts**

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³³ Id., citing *People v. Sipin*, G.R. No. 224290, June 11, 2018, accessed at <<http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64255>>.

³⁴ 686 Phil. 1024 (2012).

were employed to look for other representatives, given the circumstances — is to be regarded as a flimsy excuse. We stress that it is the prosecution who has the positive duty to establish that earnest efforts were employed in contacting the representatives enumerated under Section 21(1) of R.A. 9165, or that there was a justifiable ground for failing to do so.³⁵ (Emphasis and underscoring supplied)

The Court emphasizes that while it is laudable that police officers exert earnest efforts in catching drug pushers, they must always do so within the bounds of the law.³⁶ 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 sachets of *shabu*, the evils of switching, “planting” or contamination of the evidence would again rear their ugly heads as to negate the integrity and credibility of the seizure and confiscation of the sachets of *shabu* and drug paraphernalia that were evidence herein of the *corpus delicti*. Thus, this failure adversely affected the trustworthiness of the incrimination of the accused. Indeed, the insulating presence of such witnesses would have preserved an unbroken chain of custody.³⁷

It is equally important to point out that the two inventory receipts — the “Inventory Receipt of Confiscated/Seized Drugs”³⁸ — were not signed by Tabuzo or his representative or counsel, contrary to the express requirement of the law. The inventory receipts were signed only by PO3 Sy, SPO2 Cabinta, the investigator assigned on the case, and the elected barangay official, Mr. Vivencio Manero.

To reiterate, it is a mandatory requirement under Section 21 of RA 9165, as amended by RA 10640, that the accused or his/her representative and all of the witnesses mentioned therein sign the copies of the inventory and be given a copy thereof.

Here, Tabuzo’s signature does not appear in the inventory receipts, and the reason for the absence of the signatures was likewise not explained. Clearly, there were lapses in following the procedure outlined in Section 21 of RA 9165, as amended by RA 10640. These lapses thus cast doubt on the integrity and evidentiary value of the items seized, *i.e.*, the sachets of *shabu* and drug paraphernalia.

Concededly, Section 21 of the IRR of RA 9165 provides that “non-compliance with these requirements under justifiable grounds, as

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³⁵ Id. at 1052-1053.

³⁶ *People v. Ramos*, 791 Phil. 162, 175 (2016).

³⁷ See *People v. Mendoza*, supra note 29, at 764.

³⁸ Records, pp. 12-13.

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.” For this provision to be effective, however, the prosecution must first (1) recognize any lapse on the part of the police officers and (2) be able to justify the same.³⁹ Breaches of the procedure contained in Section 21 committed by the police officers, left unacknowledged and unexplained by the State, militate against a finding of guilt beyond reasonable doubt against the accused as the integrity and evidentiary value of the *corpus delicti* would be compromised.⁴⁰ As the Court explained in *People v. Reyes*:⁴¹

Under the last paragraph of Section 21(a), Article II of the IRR of R.A. No. 9165, a saving mechanism has been provided to ensure that not every case of non-compliance with the procedures for the preservation of the chain of custody will irretrievably prejudice the Prosecution's case against the accused. **To warrant the application of this saving mechanism, however, the Prosecution must recognize the lapse or lapses, and justify or explain them. Such justification or explanation would be the basis for applying the saving mechanism.** Yet, the Prosecution did not concede such lapses, and did not even tender any token justification or explanation for them. **The failure to justify or explain underscored the doubt and suspicion about the integrity of the evidence of the *corpus delicti*.** With the chain of custody having been compromised, the accused deserves acquittal.⁴² (Emphasis supplied)

In sum, the prosecution failed to provide justifiable grounds for the apprehending team's deviation from the rules laid down in Section 21 of RA 9165. The integrity and evidentiary value of the *corpus delicti* have thus been compromised. In light of this, Tabuzo must perforce be acquitted.

WHEREFORE, in view of the foregoing, the appeal is hereby **GRANTED**. The Decision dated June 22, 2018 of the Court of Appeals in CA-G.R. CR-HC No. 09439 is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant Alex Tabuzo y Orosco @ Alex is **ACQUITTED** of the crimes 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.

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³⁹ *People v. Alagarme*, 754 Phil. 449, 461 (2015).

⁴⁰ See *People v. Sumili*, 753 Phil. 342, 350 (2015).

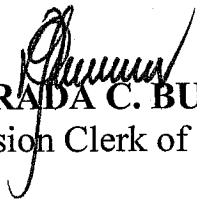
⁴¹ 797 Phil. 671 (2016).

⁴² *Id.* at 690.

Let a copy of this Resolution 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 Resolution the action he has taken.

SO ORDERED.” *Inting, J., additional member per Special Order 2726 dated October 25, 2019.*

Very truly yours,


LIBRADA C. BUENA
Division Clerk of Court ^{2019/12/04}
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The Solicitor General
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1229 Makati City

Court of Appeals (x)
Manila
(CA-G.R. CR HC No. 09439)

The Hon. Presiding Judge
Regional Trial Court, Branch 172
1440 Valenzuela City
(Crim. Case Nos. 1560-V-15, 1561-V-15
& 1562-V-15)

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