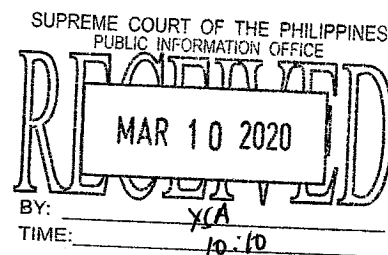




Republic of the Philippines  
Supreme Court  
Manila



FIRST DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated **January 6, 2020** which reads as follows:

**“G.R. No. 244171 - People of the Philippines v. Tanjie Maromsalic Serabo**

This is an appeal from the Decision<sup>1</sup> dated August 15, 2018 of the Court of Appeals (CA)-Cagayan de Oro in CA-G.R. CR-HC No. 10678-MIN, which affirmed the Judgment<sup>2</sup> dated March 17, 2017 of the Regional Trial Court (RTC) of Lupon, Davao Oriental, Branch 32, in Criminal Case Nos. 1752-15 and 1753-15, convicting Tanjie Maromsalic Serabo (accused-appellant) of violation of Section 5 (illegal sale) and Section 11 (illegal possession), Article II of Republic Act (R.A.) No. 9165, otherwise known as the Dangerous Drugs Act of 2002.

**The Facts**

Accused-appellant was charged with illegal sale and possession of *shabu* in two separate Information dated December 23, 2014 as follows:

Criminal Case No. 1752-15  
For Violation of Sec. 5, Art. II of R.A. 9165

That on or about December 22, 2014 in the Municipality of Banaybanay, Davao Oriental, Philippines, and within the jurisdiction of the Honorable Court, the above-named accused, without authority of law did then and there wilfully, unlawfully and feloniously sell, dispense, trade and distribute one (1) sachet of methamphetamine hydrochloride or commonly known as “shabu”,

- over – twelve (12) pages ...

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<sup>1</sup> Penned by Associate Justice Edgardo A. Camello, with Associate Justices Perpetua T. Atal-Paño and Walter S. Ong concurring; *rollo*, pp. 3-24.

<sup>2</sup> Penned by Presiding Judge Emilio G. Dayanghirang III; CA *rollo*, pp. 23-41.

a dangerous drugs, with an estimated weight of 0.0283 gram[s], without proper license or permit from the authorities, to the damage and prejudice of the state.

CONTRARY TO LAW.<sup>3</sup>

Criminal Case No. 1753-15  
For Violation Sec. 11, Art. II of R.A. 9165

That on or about December 22, 2014 in the Municipality of Banaybanay, Davao Oriental, Philippines, and within the jurisdiction of the Honorable Court, the above-named accused, without authority of law did then and there wilfully, unlawfully and feloniously have in possession and control ten (10) small sachets of methamphetamine hydrochloride or commonly known as "shabu", a dangerous drugs, with an estimated weight of 0.2303 gram[s], without proper license or permit from the authorities, to the damage and prejudice of the state.

CONTRARY TO LAW.<sup>4</sup>

When arraigned on February 17, 2015, accused-appellant pleaded not guilty to the charges. Pre-trial was conducted, and thereafter, trial ensued.<sup>5</sup>

The prosecution presented PO3 Jimmy Boy Paras (PO3 Paras), PO2 Arturo C. Hayahay, Jr. (PO2 Hayahay), and Barangay Captain Renante Madelo (Bgy. Captain Madelo) as witnesses.

These witnesses alleged that on December 22, 2014, a confidential informant went to the Banaybanay Municipal Police Station to report on accused-appellant's drug-selling activities at Purok 3, Bgy. Poblacion, Banaybanay, Davao Oriental. Acting thereon, the Chief of Police formed a buy-bust team, wherein PO3 Paras was designated as poseur-buyer, while PO2 Hayahay was tasked to be the back-up arresting officer.<sup>6</sup>

At around 6:30 p.m. of the same date, as planned, the team went to the target area. Accused-appellant met up with PO3 Paras and the confidential informant thereat. The confidential informant communicated to accused-appellant his intention to buy "one sachet." Accused-appellant gave one small sachet to the confidential informant. In turn, the confidential informant gave accused-appellant the marked money as payment. The confidential informant then

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<sup>3</sup> Id. at 24.

<sup>4</sup> Id.

<sup>5</sup> Id. at 25.

<sup>6</sup> Id. at 25-27.

handed over the merchandise to PO3 Paras, which prompted the latter to place his hand in his back pocket, the pre-arranged signal for PO2 Hayahay to assist in the arrest. Upon arrest, PO3 Paras frisked accused-appellant and recovered from him 10 other sachets of suspected *shabu* and some cash with the marked money. Thereafter, they proceeded to the police station. Thereat, they marked and took photographs of the seized items, and conducted an inventory thereof in the presence of Bgy. Captain Madelo, Gigi Rose Amabao of the Department of Justice (DOJ), Novy Naipo, a media representative, and a certain Pastor Ricky S. Salera.<sup>7</sup>

After the inventory, PO3 Paras placed the seized items in his locker at the police station for safekeeping. The following day, PO3 Paras brought the items to the Philippine National Police Crime Laboratory for examination. Per Chemistry Report No. D-082-14, the specimens yielded positive for methamphetamine hydrochloride or *shabu*.<sup>8</sup>

For its part, the defense presented the lone testimony of accused-appellant. He testified that on the alleged date of arrest, around 6:00 p.m., he was at the farm, harvesting watermelons when eight persons arrived and poked their guns at him. These persons then frisked him but despite the fact that nothing was confiscated from him, he was brought to the police station. At the police station, PO3 Paras showed him a cellophane containing *shabu* allegedly taken from him. After an hour from their arrival thereat, barangay officials also arrived. While accused-appellant admitted to having once used *shabu*, he denied the accusation that he was caught selling and possessing *shabu*.<sup>9</sup>

### The RTC Ruling

In a Judgment dated March 17, 2017, the RTC found accused-appellant guilty beyond reasonable doubt of the charges, relying heavily on the testimonies of the police officers. The RTC also found an unbroken chain of custody established by the prosecution. According to the RTC, the regularity in the performance of the arresting officers' official function should be upheld as there was no clear and convincing proof to the contrary nor were they moved by ill-will. Also, the trial court noted that the fact that accused-appellant did not attempt to file any criminal or administrative case against the

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<sup>7</sup> *Rollo*, pp. 5-6.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.* at 6.

arresting officers runs counter to the normal human conduct and behaviour of a person who claims to be aggrieved. The RTC disposed, thus:

**WHEREFORE, premises considered,** the Court finds [accused-appellant] TANJIE MAROMSALIC SERABO **guilty** beyond reasonable doubt of the crimes charged and he is hereby sentenced, as follows:

1) In Criminal Case No. 1752-15, for Violation of Sec. 5, Article II of R.A. No. 9165, he is sentenced to suffer the penalty of **Life Imprisonment** and a fine of **Five Hundred Thousand Pesos (P500,000.00)**.

2) In Criminal Case No. 1753-15, for Violation of Section 11, Article II of R.A. No. 9165, he is sentenced to suffer the indeterminate prison term of **Twelve (12) Years, One (1) day, as minimum, to Fifteen (15) years, as maximum,** and to pay a fine of **Three Hundred Thousand Pesos (P300,000.00)**

The confiscated eleven (11) plastic sachets containing white methamphetamine hydrochloride or "shabu" are forfeited in favor of the Government and are ordered to be turned-over to the Philippine Drug Enforcement Agency for its appropriate disposition.

**SO ORDERED.**<sup>10</sup>

Accused-appellant then appealed said Judgment to the CA.

### **The CA Ruling**

In its Decision dated August 15, 2018, the CA affirmed the RTC judgment in its entirety, thus:

FOR THESE REASONS, the appealed Judgment dated 17 March 2017 is **AFFIRMED** in all respects.

**SO ORDERED.**<sup>11</sup>

Hence, this appeal.

### **The Issue**

Whether or not accused-appellant's guilt in Criminal Case Nos. 1752-15 and 1753-15 was proved beyond reasonable doubt.

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<sup>10</sup> CA *rollo*, pp. 40-41.

<sup>11</sup> *Rollo*, p. 23.

### The Court's Ruling

The appeal is granted.

The cornerstone of all criminal prosecutions is the right of the accused to be presumed innocent.<sup>12</sup> No less than the Constitution mandates that every accused shall be presumed innocent unless his guilt is proven beyond reasonable doubt. Proof beyond reasonable doubt charges the prosecution with the immense responsibility of establishing moral certainty. Should the prosecution fail to discharge its burden, acquittal must follow as a matter of course.<sup>13</sup> In evaluating the case, every circumstance in favor of the accused shall be considered.<sup>14</sup> 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. If there exists even an iota of doubt, this Court is under a long standing legal injunction to resolve the doubt in favor of the accused.<sup>15</sup>

This is especially true in criminal prosecutions involving illegal drugs as it is a matter of judicial notice that entrapment operations, which are the usual means of apprehending violators of the dangerous drugs law, are susceptible to police abuse. Such abuse is easier to carry out due to the imposed secrecy that inevitably shrouds all drug deals,<sup>16</sup> and add to that the unique characteristic of the dangerous drug that renders it indistinct, not readily identifiable, and easily open to tampering, alteration or substitution either by accident or otherwise.<sup>17</sup>

Due to this gruesome reality, the Court is compelled to be more circumspect in deciding drug-related cases.

To successfully prosecute a case involving illegal sale of dangerous drugs, the prosecution must prove beyond reasonable doubt: (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.<sup>18</sup> On the other hand, the following elements must be established for the prosecution of illegal possession of dangerous drugs: (a) the accused is in possession of an item or object which is

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<sup>12</sup> *People v. Luna*, G.R. No. 219164, March 21, 2018.

<sup>13</sup> *Daayata v. People*, 807 Phil. 102, 117-118 (2017).

<sup>14</sup> *People v. Maraorao*, 688 Phil. 458, 465 (2012).

<sup>15</sup> *People v. Cruz*, 736 Phil. 564, 580 (2014).

<sup>16</sup> *People v. Otico*, G.R. No. 231133, June 6, 2018, 865 SCRA 534, 550, citing *People v. Doria*, 361 Phil. 595 (1999).

<sup>17</sup> *People v. Hementiza*, 807 Phil. 1017, 1026 (2017).

<sup>18</sup> *People v. Cabrellos*, G.R. No. 229826, July 30, 2018.

identified to be a prohibited drug; (b) such possession is not authorized by law; and (c) the accused freely and consciously possessed the drug.<sup>19</sup> In both cases, and in any case involving dangerous drugs, the dangerous drug itself constitutes the very *corpus delicti* of the offense. Thus, it is crucial in every case involving illegal drugs to prove with moral certainty the identity and integrity of the very *corpus delicti* of the offense. Without certainty as to the existence, identity, and integrity of the illegal drugs subject of the case, there is no illegal drug violation to speak of.<sup>20</sup>

For this reason, both law and jurisprudence in our jurisdiction have set, and are continuously developing, certain guidelines on how confiscated drugs should be handled.<sup>21</sup> An unbroken chain of custody serves as an important procedural safeguard to ensure that unnecessary doubts on the identity and integrity of the evidence are minimized, if not altogether removed.<sup>22</sup> Section 1(b) of the Dangerous Drugs Board Regulation No. 1, series of 2002,<sup>23</sup> defines chain of custody as follows:

“Chain of Custody” means the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction. Such record of movements and custody of seized item shall include the identity and signature of the person who held temporary custody of the seized item, the date and time when such transfer of custody were made in the course of safekeeping and use in court as evidence, and the final disposition.

The prosecution is tasked to account for each link in the chain of custody of the dangerous drug, *from the moment of seizure from the accused* until it was presented in court.<sup>24</sup>

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<sup>19</sup> Supra note 17, at 1025-1026.

<sup>20</sup> *People v. Bintaib*, G.R. No. 217805, April 2, 2018.

<sup>21</sup> Id.

<sup>22</sup> *People v. Barte*, 806 Phil. 533, 542 (2017).

<sup>23</sup> GUIDELINES ON THE CUSTODY AND DISPOSITION OF SEIZED DANGEROUS DRUGS, CONTROLLED PRECURSORS AND ESSENTIAL CHEMICALS, AND LABORATORY EQUIPMENT, adopted and approved on October 18, 2002.

<sup>24</sup> Supra note 22.

Section 21,<sup>25</sup> Article II of R.A. No. 9165 and Section 21(a),<sup>26</sup> Article II of its Implementing Rules and Regulations (IRR), as amended by R.A. No. 10640,<sup>27</sup> outline the procedure which police officers, who handle confiscated items in drugs cases, should follow to be able to present an unbroken chain of custody in the prosecution

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<sup>25</sup> 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.

<sup>26</sup> SEC. 21. x x x

(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 of said items.

<sup>27</sup> AN ACT TO FURTHER STRENGTHEN THE ANTI-DRUG CAMPAIGN OF THE GOVERNMENT, AMENDING FOR THE PURPOSE SECTION 21 OF REPUBLIC ACT NO. 9165, OTHERWISE KNOWN AS THE "COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002," approved on July 15, 2014, Section 21 thereof provides:

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 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.

of such cases. The Court, in the case of *People v. Luna*,<sup>28</sup> summarized said procedure, *viz.*:

1. The initial custody requirements must be done **immediately after seizure** or confiscation;
2. The **physical inventory and photographing** must be done **in the presence of**:
  - a. The **accused** or his representative or counsel;
  - b. The **required witnesses**:
    - i. a representative from the **media** and the **Department of Justice (DOJ), and any elected public official** for offenses committed during the effectivity of RA 9165 and prior to its amendment by RA 10640 x x x;
    - ii. an **elected public official** and a representative of the **National Prosecution Service of the DOJ or the media** for offenses committed during the effectivity of RA 10640.

Due to the crucial purpose for which these requirements are set forth, compliance therewith is, as a rule, mandatory. Our legislature, as well as this Court, however, is not unaware of the understandable fact that strict compliance with said mandatory requirements may not always be possible under varied field conditions.<sup>29</sup> Thus, the IRR of R.A. No. 9165, as amended, provides for a saving clause in case of non-compliance, substantially stating that deviation from the mandatory requirements does not automatically render void and invalid such seizure and custody of the items as long as, and only if, the prosecution satisfactorily proves that there is justifiable ground for such non-compliance, and the integrity and evidentiary value of the items are properly preserved by the apprehending team.

After a judicious review of this case, we find that the police officers committed unjustified deviations from the mandatory requirements of the chain of custody rule.

As found by the RTC and the CA, and in fact admitted by the apprehending officers, the marking, taking of photographs, and

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<sup>28</sup> *People v. Luna*, supra note 12.

<sup>29</sup> See *People v. Crispo and Herrera*, G.R. No. 230065, March 14, 2018, citing *People v. Sanchez*, 590 Phil. 214, 234 (2008).



conduct of physical inventory were not done immediately after seizure and confiscation. Moreover, while there were four witnesses during the conduct of the physical inventory, none of these witnesses were present during the seizure and apprehension.

This Court has consistently explained in recent cases the plain import of the phrase “immediately after seizure and confiscation” in the initial custody requirements. Considering its purpose, which is to prevent planting, tampering with, or compromising evidence, it necessarily means that the marking, taking of photographs, and physical inventory of the seized items must be done *immediately at the place of apprehension*. Only if this is not practicable may it be done as soon as the apprehending team reaches the nearest police station or nearest office.<sup>30</sup>

More importantly, whether these initial custody requirements were conducted at the place of seizure and apprehension, or at the nearest police station or office, they are required to be done in the presence of an elected public official and a representative of the National Prosecution Service of the DOJ or the media, who are required to sign an inventory and given copies thereof. Necessarily, thus, the law and its IRR require that these mandatory witnesses must already be physically present at the time of seizure and apprehension, otherwise their purpose will be rendered nugatory. The presence of these witnesses was intended as a guarantee against planting of evidence and frame up, as they were “necessary to insulate the apprehension and incrimination proceedings from any taint of illegitimacy or irregularity.”<sup>31</sup> The Court expounded on this requirement in the case of *People v. Tomawis*,<sup>32</sup> viz.:

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

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<sup>30</sup> *People v. Adobar*, G.R. No. 222559, June 6, 2018; *People v. Sood*, G.R. No. 227394, June 6, 2018.

<sup>31</sup> *People v. Cabrellos*, G.R. No. 229826, July 30, 2018, citing *People v. Sagana*, 815 Phil. 356, 373 (2017).

<sup>32</sup> G.R. No. 228890, April 18, 2018.

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."

While it may be true that more than the required number of witnesses were present during the inventory at the police station in this case, none of these witnesses were present during the seizure and apprehension to attest to the regularity of the buy-bust operation, if at all, and to cancel any doubts as to the source, identity, and integrity of the alleged seized items. It bears stressing that the seizure and apprehension constitute the very first link in the chain of custody. Thus, the fact that only the apprehending officers were present during the apprehension of accused-appellant, coupled with the defense's allegation that there was no buy-bust operation conducted, is enough to sustain lingering doubts in our minds as to the source, identity, and integrity of the prosecution's object evidence. This Court considers the virtual impossibility for any accused to prove his claim that the evidence against him was planted in such apprehension where only he and the police officers were present.

The police officers may have given a justification as to the necessity of immediately leaving the place of arrest and conducting the inventory at the police station, *i.e.*, for security purposes. However, no explanation was given why they called up the required witnesses only at the police station, after the buy-bust operation. This Court sees no difficulty in, at least, trying to secure the presence of the witnesses during the planning of the buy-bust operation. Again, a justifiable reason for non-compliance with the mandatory requirements under the law, or a showing of genuine and sufficient effort to comply must be alleged and proved by the prosecution for the saving clause under the IRR to apply.

Judicial reliance on the presumption of regularity in the performance of official duty despite the lapses in the procedures undertaken is, thus, fundamentally unsound because the lapses

themselves are affirmative proofs of irregularity.<sup>33</sup> Time and again, we ruled that the presumption that the regular duty was performed by the arresting officer could not prevail over the presumption of innocence of the accused.<sup>34</sup>

In sum, as the chain of custody was broken at the very first link, this Court is constrained to rule for the acquittal of accused-appellant on the ground of reasonable doubt.

We note, once again, that this Court will relentlessly remind police officers, as well as prosecutors, of their positive duty to comply with the mandatory requirements of Section 21 of R.A. No. 9165 and its IRR, and R.A. No. 10640 in applicable cases so we could all effectively perform our part in the State's campaign against illegal drugs; otherwise, every entrapment operation or prosecution of drug cases will just be futile, if not arbitrary, actions against any individual. We quote herein the Court's reminder in *Luna*:

The law, being a creature of justice, is blind towards both the guilty and the innocent. The Court, as justice incarnate, must then be relentless in exacting the standards laid down by our laws - in fact, the Court can do no less. For when the fundamental rights of life and liberty are already hanging in the balance, it is the Court that must, at the risk of letting the guilty go unpunished, remain unforgiving in its calling. And if the guilty does go unpunished, then that is on the police and the prosecution - that is for them to explain to the People.<sup>35</sup>

**WHEREFORE**, premises considered, the Decision dated August 15, 2018 of the Court of Appeals-Cagayan de Oro in CA-G.R. CR-H.C. No. 01678-MIN is hereby **REVERSED and SET ASIDE**. Accordingly, accused-appellant Tanjie Maromsalic Serabo is **ACQUITTED** of the offenses charged. He is **ORDERED IMMEDIATELY RELEASED** from detention, unless he is confined for any other lawful cause.

Let a copy of this Resolution be furnished to the Director of the Bureau of Corrections, for immediate implementation. The Director of the Bureau of Corrections is directed to report to this Court, within five (5) days from receipt of this Resolution, the action he has taken. Copies shall also be furnished to the Director General of the Philippine Drug Enforcement Agency for his information.

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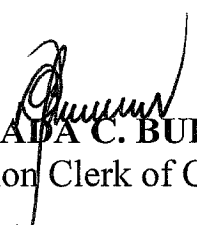
<sup>33</sup> *People v. Ramirez*, G.R. No. 225690, January 17, 2018.

<sup>34</sup> *People v. Pagaura*, 334 Phil. 683-690 (1997).

<sup>35</sup> *People v. Luna*, supra note 12.

**SO ORDERED.” Lopez, J., on official leave.**

Very truly yours,

  
**LIBRADA C. BUENA**  
Division Clerk of Court  
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The Hon. Presiding Judge  
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(Crim. Case Nos. 1752-15 & 1753-15)

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