Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, Third Division, issued a Resolution dated **November 9, 2020**, *which reads as follows:*

"G.R. No. 229044 (PEOPLE OF THE PHILIPPINES, *plaintiff-appellee* v. LUIS BALDERAMA, JR. y TANGTANG, *accused-appellant*). — This Court resolves an appeal from the Court of Appeals Decision,[1] which affirmed the Regional Trial Court's conviction[2] of Luis Balderama, Jr. y Tangtang (Balderama) for illegal sale of dangerous drugs, penalized under Section 5 of Republic Act No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

On May 7, 2010, Balderama was charged with the crime in an Information, which states:

> That on 14th day of March 2010 at about 6:50 o'clock in the early evening at San Jose, Nabua, Camarines Sur, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without any legal purpose and authority, did, then and there willfully, unlawfully and knowingly sell to a police officer who acted as a poseur buyer dried marijuana leaves with fruiting tops, a dangerous drug, placed in one heat sealed transparent plastic sachet now with marking ABR-1 weighing more or less 1.46 grams and another two pieces which were wrapped with paper also containing dried marijuana leaves with fruiting tops weighing more or less 1.57 grams and 4.29 grams respectively including the wrapper, now with markings ABR-2 and ABR-3, to the great damage of public interest and of that [sic] of the Republic of the Philippines.[3]

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1 *Rollo*, pp. 2–13. The April 20, 2016 Decision was penned by Associate Justice Pedro B. Corales and concurred in by Associate Justices Sesinando E. Villon and Rodil Z. Zalameda (now a member of this Court) of the Eleventh Division, Court of Appeals, Manila.

2 CA *rollo*, pp. 39–46. The February 25, 2015 Judgment was penned by Presiding Judge Manuel M. Rosales of the Regional Trial Court of Iriga City, Branch 34.

3 CA *rollo*, p. 39.

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During arraignment, Balderama pleaded not guilty to the crime charged.[4] After preliminary conference and pre-trial, trial ensued.[5]

The prosecution presented six (6) witnesses: (1) Police Officer 2 Arthur Robrigado (PO2 Robrigado); (2) Senior Police Officer 2 Cleo Sabas (SPO2 Sabas); (3) SPO2 Francis Fidel Agnas (SPO2 Agnas); (4) Police Inspector Jun Malong (Inspector Malong); (5) PO3 Carolyn Cavite (PO3 Cavite); and (6) Barangay Captain Julian Ocampo (Barangay Captain Ocampo).[6]

According to the prosecution, on March 14, 2010, officers of the Nabua Police Station surveilled an area in San Jose Nabua, Camarines Sur, acting on a report about some illegal sale of drugs. There, they observed that people would come in and out of Balderama's house.[7]

Based on this, SPO2 Agnas, one of the surveilling officers, prepared a pre-operation report.[8] At once, the police planned a buy-bust operation, forming a team that included SPO2 Agnas, SPO2 Sabas, PO3 Manaog, PO2 Robrigado, two confidential assets, and an agent of the Philippine Drug Enforcement Agency.[9]

PO2 Robrigado was assigned as the poseur-buyer, with SPO2 Sabas and SPO3 Agnas as his back-up. The buy-bust money consisted of three marked ₱100.00 bills and one marked ₱200.00 bill, totaling ₱500.00. After the briefing, the officers went to the target area.[10]

While the other team members stood by, PO2 Robrigado and the two assets went to Balderama's house. One of the assets then called for Balderama. When Balderama stepped out, PO2 Robrigado told him that he would like to buy two packs of marijuana. Balderama went inside his house, and when he came back out, gave PO2 Robrigado a plastic sachet of suspected marijuana, along with two more packs of marijuana wrapped in newspaper.[11]

At this, PO2 Robrigado identified himself as a police officer, prompting Balderama to run back inside his house and escape through the backdoor.[12] Placing the seized items in his right pocket, PO2 Robrigado

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4 Id. at 40.
5 Id.
6 Id. at 40 and *rollo*, p. 3. Cavite's designation was sometimes "PO2."
7 *Rollo*, p. 4.
8 Id.
9 CA *rollo*, p. 40.
10 Id.
11 Id. at 40–41.
12 Id. at 41.

chased after Balderama and caught him with help from SPO2 Sabas and SPO3 Agnas, who had rushed to the area and blocked the man's way.[13]

PO2 Robrigado then informed Balderama of his constitutional rights. Upon frisking, SPO2 Sabas found the marked money in Balderama's pocket. Meanwhile, PO2 Robrigado marked the three packs of marijuana "ABR-1," "ABR-2," and "ABR-3," and handed them to SPO2 Sabas, who inventoried the items in the presence of one Prosecutor Fajardo of the Department of Justice, Barangay Captain Ocampo, and media representative Glenda Bearis (Bearis). SPO2 Hugo took photos and returned the seized items to PO2 Robrigado.[14]

The buy-bust team then brought Balderama to the police station. SPO2 Hugo prepared the requests for a drug test on Balderama and for a laboratory examination of the seized items. Then, PO2 Robrigado brought the items and the requests to the Philippine National Police Crime Laboratory in Naga City. There, PO3 Laut received the items and turned them over to forensic chemist Edsel Villalobos (Villalobos).[15]

Upon examination, the specimens tested positive for marijuana. Villalobos then handed the seized items to the evidence custodian, PO3 Cavite, who stored them in the evidence cabinet. They were kept there until Inspector Malong presented them in court.[16]

The defense presented the sole testimony of Balderama, who denied the charges against him and asserted that he was framed.[17]

Balderama alleged that on the evening of March 14, 2010, he was having dinner with his family when Owen Villamer (Villamer) called for him and invited him to attend a birthday party. On their way, Villamer admitted that he was with someone, pointing to a man wearing a cap and a jacket standing by the roadside. Balderama would later learn that the man was PO2 Robrigado. When they approached the man, Villamer suddenly ran away. At once, PO2 Robrigado held Balderama's wrists, twisted his arm, and told him not to run.[18]

When Balderama called for help, his wife came out of the house and asked why the man was twisting Balderama's arm. Instead of answering, PO2 Robrigado shouted, "Positive!" At this, several police officers came rushing and pointing guns at Balderama. He asked why he was being

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13 *Rollo*, p. 5 and CA *rollo*, p. 31.
14 CA *rollo*, p. 41.
15 Id.
16 Id.
17 Id.
18 Id. at 41–42.

arrested, but he was told to be quiet and was led to a nipa hut near his house, where they tied his hands.[19]

When one officer frisked him, Balderama voluntarily turned out his pocket and gave the ₱120.00 inside it to the police. Soon, when the media representative, the barangay captain, and the Department of Justice representative arrived, Balderama was made to sign a piece of paper, which he refused to do. The police then took the handkerchief tied on his arm, put it on the table with the money and newspaper, and inventoried the items. He was handcuffed and brought the police station, where he was jailed.[20]

In a February 25, 2015 Judgment,[21] the Regional Trial Court found Balderama guilty beyond reasonable doubt of illegal sale of drugs. It found that the prosecution established all the elements of the offense. It also found that Balderama's defense of frame-up was insufficient, failing to show ill motive on the part of the police officers, who were presumed to have regularly performed their duties.[22] It disposed:

> **WHEREORE**, for all the foregoing, judgment is hereby rendered finding accused Luis Balderama Jr. y Tangtang guilty beyond reasonable doubt for violation of Section 5 Article II of Republic Act 9165 and hereby sentenced to suffer **life imprisonment** and to pay a fine in the amount of **Five Hundred Thousand Pesos (Php500,000.00)**.
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> SO ORDERED.[23] (Emphasis in the original)

Balderama appealed his conviction. He raised doubt on the integrity of the *corpus delicti*, claiming that the police officers failed to comply with Section 21 of the Comprehensive Dangerous Drugs Act.[24] He also argued that the buy-bust operation was an "instigation" and not an "entrapment."[25] He maintained that PO2 Robrigado admitted to initiating the sale, and thus, it was he who induced him to commit the crime.[26]

Balderama also pointed out how, per PO2 Robrigado's testimony, the officer placed the seized drugs in his right pocket while chasing him.[27] This, Balderama alleged, tainted the items' integrity, especially since the officer's short pants had six pockets.[28] He also argued that the testimonies of PO2 Robrigado and SPO2 Sabas conflicted as to who held the seized items after

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19 Id. at 42 and *rollo*, pp. 5–6.
20 Id.
21 Id. at 39–46.
22 Id. at 44–46.
23 Id.
24 Id. at 29.
25 Id.
26 Id. at 31.
27 Id.
28 Id. at 33.

the inventory, thus failing to identify who brought the seized items to the police station.[29]

The prosecution, on the other hand, insisted that Balderama was rightfully convicted. It maintained that the police officers' positive and direct testimonies were corroborated by the back-up officers, trumping Balderama's self-serving defense of denial and alibi. It also claimed that the police officers were not shown to have ill motive, and the presumption of regularity in their duties remained intact.[30]

The prosecution further insisted that it proved all the elements of the offense, the *corpus delicti* having been established.[31] It argued that there was no break in the chain of custody—the seized items were, upon arrest, marked, inventoried, and photographed in the presence of Balderama and the required witnesses.[32]

In an April 20, 2016 Decision,[33] the Court of Appeals affirmed Balderama's conviction *in toto*, finding all the crime's elements present. It found that he was caught *in flagrante delicto* during a buy-bust operation. It also held that the prosecution had preserved the integrity and evidentiary value of the seized items, as the apprehending officers strictly complied with Section 21 of Republic Act No. 9165.[34]

The Court of Appeals further ruled that PO2 Robrigado's initial confusion as to who held the items while going to the police station did not detract from his credibility, especially since he testified two years after the arrest. In any case, it noted that the officer was later able to clarify that the items were returned to him after the inventory.[35]

The Court of Appeals likewise found that PO2 Robrigado's momentary placing of the seized items in his pocket was reasonable, given that he could not risk losing the *corpus delicti* and the culprit. It maintained that the integrity of the seized items was still preserved, finding no gap in the chain of custody.[36]

Thus, Balderama filed a Notice of Appeal.[37] Later, in a March 8, 2017 Resolution,[38] this Court noted receipt of the case records and ordered the

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29 Id. at 33–34.
30 Id. at 70–71.
31 Id. at 74.
32 Id. at 78.
33 *Rollo*, p. 12.
34 Id. at 9–10.
35 Id. at 10–11.
36 Id. at 11–12.
37 Id. at 14–16.
38 Id. at 19–20.

parties to file their supplemental briefs. Both accused-appellant and the Office of the Solicitor General, for plaintiff-appellee People of the Philippines, manifested that they would no longer do so.[39]

The sole issue in this case is whether or not the prosecution proved beyond reasonable doubt that accused-appellant Luis Balderama, Jr. y Tangtang violated Section 5 of Republic Act No. 9165.

This Court affirms his conviction. The prosecution was able to prove beyond reasonable doubt all the elements of the illegal sale of dangerous drugs and the requirements under Section 21 of Republic Act No. 9165.

Balderama was charged with violating Section 5 of Republic Act No. 9165, which states in part:

> SECTION 5. *Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals.* — The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (P500,000.00) to Ten million pesos (P10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions.

The elements of illegal sale of dangerous drugs are the following: "(1) proof that the transaction or sale took place and (2) the presentation in court of the *corpus delicti* or the illicit drug as evidence."[40] This Court has held:

> The commission of the offense of illegal sale of dangerous drugs requires merely the consummation of the selling transaction, which happens the moment the buyer receives the drug from the seller. Settled is the rule that as long as the police officer went through the operation as a buyer and his offer was accepted by appellant and the dangerous drugs delivered to the former; the crime is considered consummated by the delivery of the goods.[41] (Citation omitted)

Here, accused-appellant *admitted to the commission of the acts alleged* when he argued that the buy-bust operation was an instigation and not an entrapment.[42] He likewise claimed that since PO2 Robrigado

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39 Id. 25 and 31.

40 *People v. Morales,* 630 Phil. 215, 228 (2010) [Per J. Del Castillo, Second Division], citing *People v. Darisan*, 597 Phil. 479, 485 (2009) [Per J. Corona, First Division] and *People v. Partoza*, 605 Phil. 883, 890 (2009) [Per J. Tinga, Second Division].

41 *People v. Villarta,* 731 SCRA 497, 509 (2014) [Per J. Perez, Second Division].

42 CA *rollo*, p. 29.

admitted to initiating the sale, it was the officer who *induced him* to commit the crime.[43]

This Court has long recognized that a buy-bust operation is a valid form of entrapment undertaken by police officers, with the goal of apprehending criminals who commit offenses through clandestine operations:

> [A] buy bust operation is a valid and legitimate form of entrapment of the drug pusher. In such operation, the poseur buyer transacts with the suspect by purchasing a quantity of the dangerous drug and paying the price agreed upon, and in turn the drug pusher turns over or delivers the dangerous drug subject of their agreement in exchange for the price or other consideration. Once the transaction is consummated, the drug pusher is arrested, and can be held to account under the criminal law. The justification that underlies the legitimacy of the buy-bust operation is that the suspect is arrested *in flagrante delicto*, that is, the suspect has just committed, or is in the act of committing, or is attempting to commit the offense in the presence of the arresting police officer or private person.[44] (Citations omitted)

In *People v. Doria*,[45] this Court differentiated entrapment from instigation:

> Accused-appellants were caught by the police in a buy-bust operation. A buy-bust operation is a form of entrapment employed by peace officers as an effective way of apprehending a criminal in the act of the commission of an offense. Entrapment has received judicial sanction when undertaken with due regard to constitutional and legal safeguards.
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> It is recognized that in every arrest, there is a certain amount of entrapment used to outwit the persons violating or about to violate the law. Not every deception is forbidden. The type of entrapment the law forbids is the inducing of another to violate the law, the "seduction" of an otherwise innocent person into a criminal career. Where the criminal intent originates in the mind of the entrapping person and the accused is lured into the commission of the offense charged in order to prosecute him, there is entrapment and no conviction may be had. Where, however, the criminal intent originates in the mind of the accused and the criminal offense is completed, the fact that a person acting as a decoy for the state, or public officials furnished the accused an opportunity for commission of the offense, or that the accused is aided in the commission of the crime in order to secure the evidence necessary to prosecute him, there is no entrapment and the accused must be convicted. The law tolerates the use of decoys and other artifices to catch a criminal.

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43 Id. at 31.
44 *People v. Andaya,* 745 Phil. 237, 246 (2014) [Per J. Bersamin, First Division].
45 361 Phil. 595 (1999) [Per J. Puno, En Banc].

Entrapment is recognized as a valid defense that can be raised by an accused and partakes of the *nature of a confession* and avoidance. It is a positive defense. Initially, an accused has the burden of providing sufficient evidence that the government induced him to commit the offense. Once established, the burden shifts to the government to show otherwise. When entrapment is raised as a defense, American federal courts and a majority of state courts use the "subjective" or "origin of intent" test laid down in *Sorrells v. United States* to determine whether entrapment actually occurred. The focus of the inquiry is on the accused's predisposition to commit the offense charged, his state of mind and inclination before his initial exposure to government agents. All relevant facts such as the accused's mental and character traits, his past offenses, activities, his eagerness in committing the crime, his reputation, etc., are considered to assess his state of mind before the crime. The predisposition test emphasizes the accused's propensity to commit the offense rather than the officer's misconduct and reflects an attempt to draw a line between a "trap for the unwary innocent and the trap for the unwary criminal." *If the accused was found to have been ready and willing to commit the offense at any favorable opportunity, the entrapment defense will fail even if a police agent used an unduly persuasive inducement.* Some states, however, have adopted the "objective" test. This test was first authoritatively laid down in the case of *Grossman v. State* rendered by the Supreme Court of Alaska. Several other states have subsequently adopted the test by judicial pronouncement or legislation. Here, the court considers the nature of the police activity involved and the propriety of police conduct. The inquiry is focused on the inducements used by government agents, on police conduct, not on the accused and his predisposition to commit the crime. For the goal of the defense is to deter unlawful police conduct. The test of entrapment is whether the conduct of the law enforcement agent was likely to induce a normally law-abiding person, other than one who is ready and willing, to commit the offense; for purposes of this test, it is presumed that a law-abiding person would normally resist the temptation to commit a crime that is presented by the simple opportunity to act unlawfully. Official conduct that merely offers such an opportunity is permissible, but overbearing conduct, such as badgering, cajoling or importuning, or appeals to sentiments such as pity, sympathy, friendship or pleas of desperate illness, are not. Proponents of this test believe that courts must refuse to convict an entrapped accused not because his conduct falls outside the legal norm but rather because, even if his guilt has been established, the methods employed on behalf of the government to bring about the crime "cannot be countenanced." To some extent, this reflects the notion that the courts should not become tainted by condoning law enforcement improprieties. Hence, the transactions leading up to the offense, the interaction between the accused and law enforcement officer and the accused's response to the officer's inducements, the gravity of the crime, and the difficulty of detecting instances of its commission are considered in judging what the effect of the officer's conduct would be on a normal person.

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It was also in the same case of *People v. Lua Chu and Uy Se Tieng* we first laid down the distinction between entrapment vis-à-vis instigation or inducement. Quoting 16 Corpus Juris, we held:

> "ENTRAPMENT AND INSTIGATION. — While it has been said that the practice of entrapping persons into crime for the purpose of instituting criminal prosecutions is to be deplored, and while instigation, as distinguished from mere entrapment, has often been condemned and has sometimes been held to prevent the act from being criminal or punishable, the general rule is that it is no defense to the perpetrator of a crime that facilities for its commission were purposely placed in his way, or that the criminal act was done at the 'decoy solicitation' of persons seeking to expose the criminal, or that detectives feigning complicity in the act were present and apparently assisting in its commission. Especially is this true in that class of cases where the offense is one of a kind habitually committed, and the solicitation merely furnishes evidence of a course of conduct. Mere deception by the detective will not shield defendant, if the offense was committed by him, free from the influence or instigation of the detective. The fact that an agent of an owner acts as a supposed confederate of a thief is no defense to the latter in a prosecution for larceny, provided the original design was formed independently of such agent; and where a person approached by the thief as his confederate notifies the owner or the public authorities, and, being authorized by them to do so, assists the thief in carrying out the plan, the larceny is nevertheless committed. It is generally held that it is no defense to a prosecution for an illegal sale of liquor that the purchase was made by a 'spotter,' detective, or hired informer; but there are cases holding the contrary."
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. . . Entrapment, we further held, is not contrary to public policy. It is instigation that is deemed contrary to public policy and illegal.

It can thus be seen that the concept of entrapment in the American jurisdiction is similar to instigation or inducement in Philippine jurisprudence. Entrapment in the Philippines is not a defense available to the accused. It is instigation that is a defense and is considered an absolutory cause. To determine whether there is entrapment or instigation, our courts have mainly examined the conduct of the apprehending officers, not the predisposition of the accused to commit the crime. The "objective" test first applied in *United States v. Phelps* has been followed in a series of similar cases. Nevertheless, adopting the "objective" approach has not precluded us from likewise applying the "subjective" test. In *People v. Boholst*, we applied both tests by examining the conduct of the police officers in a buy-bust operation and admitting evidence of the accused's membership with the notorious and dreaded Sigue-Sigue Sputnik Gang. We also considered accused's previous convictions of other crimes and held that his opprobrious past and membership with the dreaded gang strengthened the state's evidence against him. Conversely, the evidence that the accused did not sell or smoke marijuana and did not have any criminal record was likewise admitted in *People v. Yutuc* thereby sustaining his defense that led to his acquittal.

> The distinction between entrapment and instigation has proven to be very material in anti-narcotics operations. In recent years, it has become common practice for law enforcement officers and agents to engage in buy-bust operations and other entrapment procedures in apprehending drug offenders. Anti-narcotics laws, like anti-gambling laws are regulatory statutes. They are rules of convenience designed to secure a more orderly regulation of the affairs of society, and their violation gives rise to crimes *mala prohibita*. They are not the traditional type of criminal law such as the law of murder, rape, theft, arson, etc. that deal with crimes *mala in se* or those inherently wrongful and immoral. Laws defining crimes *mala prohibita* condemn behavior directed, not against particular individuals, but against public order. Violation is deemed a wrong against society as a whole and is generally unattended with any particular harm to a definite person. These offenses are carried on in secret and the violators resort to many devices and subterfuges to avoid detection. It is rare for any member of the public, no matter how furiously he condemns acts *mala prohibita*, to be willing to assist in the enforcement of the law. It is necessary, therefore, that government in detecting and punishing violations of these laws, rely, not upon the voluntary action of aggrieved individuals, but upon the diligence of its own officials. This means that the police must be present at the time the offenses are committed either in an undercover capacity or through informants, spies or stool pigeons.
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> We therefore stress that the "objective" test in buy-bust operations demands that the details of the purported transaction must be clearly and adequately shown. This must start from the initial contact between the poseur-buyer and the pusher, the offer to purchase, the promise or payment of the consideration until the consummation of the sale by the delivery of the illegal drug subject of the sale. The manner by which the initial contact was made, whether or not through an informant, the offer to purchase the drug, the payment of the "buy-bust" money, and the delivery of the illegal drug, whether to the informant alone or the police officer, must be the subject of strict scrutiny by courts to insure that law-abiding citizens are not unlawfully induced to commit an offense. Criminals must be caught but not at all cost. At the same time, however, examining the conduct of the police should not disable courts into ignoring the accused's predisposition to commit the crime. If there is overwhelming evidence of habitual delinquency, recidivism or plain criminal proclivity, then this must also be considered. Courts should look at all factors to determine the predisposition of an accused to commit an offense in so far as they are relevant to determine the validity of the defense of inducement.[46] (Emphasis supplied, citations omitted)

In this case, the prosecution witnesses' testimonies show that the police officers conducted a valid entrapment through a buy-bust operation. The two confidential assets and PO2 Robrigado went to accused-appellant's house.[47] One of the assets called for him, and when he stepped out, PO2 Robrigado asked to buy two packs of marijuana. Upon retrieving the items in his house, accused-appellant came back to give the officer, in exchange

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[46] Id. at 608–621.
[47] CA *rollo*, p. 40.

for the marked money, a plastic sachet of marijuana and two more packs of marijuana wrapped in newspaper.[48]

Accused-appellant could not have been instigated to commit the crime. PO2 Robrigado did not badger, cajole, force, or appeal to his sentiments to sell him the drugs. While it was PO1 Robrigado who asked to purchase the marijuana, accused-appellant was ready and willing to sell it at any favorable opportunity. It is of no moment that it was PO1 Robrigado and not the confidential informant who asked for it.

As discussed, accused-appellant's claim of instigation is a clear admission that he committed the acts alleged. Thus, the sale of the drugs through the buy-bust operation was sufficiently proven. The prosecution established the first element of the offense.

Likewise, the prosecution proved the second element.

The second element requires the following: (1) the presentation of the *corpus delicti*, or the body or substance of the crime;[49] (2) the establishment that the item sold to the poseur-buyer is one of the dangerous drugs prohibited under Republic Act No. 9165; and (3) proof that the item presented in court is the item seized from the accused. To comply with these requisites, Section 21 of the Comprehensive Dangerous Drugs Act[50] provides the procedure to be followed by the apprehending officers:

> SECTION 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:
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> (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;

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48 Id. at 40–41.

49 *People v. De Leon*, 624 Phil. 786, 796 (2010) [Per J. Velasco, Jr., Third Division].

50 Republic Act No. 10640 has amended Republic Act No. 9165 on July 15, 2014. However, since the incident occurred on March 14, 2010, the applicable law is still Republic Act No. 9165.

> (2) Within twenty-four (24) hours upon confiscation/seizure of dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment, the same shall be submitted to the PDEA Forensic Laboratory for a qualitative and quantitative examination;
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> (3) A certification of the forensic laboratory examination results, which shall be done under oath by the forensic laboratory examiner, shall be issued within twenty-four (24) hours after the receipt of the subject item/s: *Provided*, That when the volume of the dangerous drugs, plant sources of dangerous drugs, and controlled precursors and essential chemicals does not allow the completion of testing within the time frame, a partial laboratory examination report shall be provisionally issued stating therein the quantities of dangerous drugs still to be examined by the forensic laboratory: *Provided, however*, That a final certification shall be issued on the completed forensic laboratory examination on the same within the next twenty-four (24) hours[.] (Emphasis in the original)

This set of requirements forms the *chain of custody rule*. Aside from ensuring the integrity of the seized items through marking, inventorying, and photographing in the presence of the required neutral witnesses, the prosecution must also show *who* had custody of the seized items, *how* they were kept, and how each stage of the was linked together. The four links in the chain of custody were discussed in *People v. Nandi*:[51]

> *[F]irst,* the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; *second,* the turnover of the illegal drug seized by the apprehending officer to the investigating officer; *third,* the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and *fourth*, the turnover and submission of the marked illegal drug seized from the forensic chemist to the court.[52] (Emphasis in the original)

Compliance with the chain of custody rule establishes proof of the integrity of the seized item in each stage, from it seizure until its presentation in court. Conversely, noncompliance taints the integrity of the seized specimen. It amounts to a failure to prove the *corpus delicti*, the second element of the offense.[53]

In this case, the prosecution complied with all the requirements under Section 21.

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51 639 Phil. 134 (2010) [Per J. Mendoza, Second Division].
52 Id. at 144–145 citing *People v. Kamad*, 624 Phil. 289, 312 (2010) [Per J. Brion, Second Division].
53 *People v. Que*, 824 Phil. 882 (2018) [Per J. Leonen, Third Division].

Upon accused-appellant's arrest, PO2 Robrigado informed him of his constitutional rights. Upon a body search, the marked money was found on him. PO2 Robrigado immediately marked the three packs of marijuana as "ABR-1," "ABR-2," and "ABR-3." He then gave the items to SPO2 Sabas, who inventoried the items. Prosecutor Fajardo, Barangay Captain Ocampo, and media representative Bearis acted as witnesses. SPO2 Hugo took photos. After the inventory, the seized items were returned to PO2 Robrigado. From the area of arrest, they then went to the police station.[54]

At the police station, SPO2 Hugo prepared the requests for drug test and laboratory examination. PO2 Robrigado brought these and the seized items to the Crime Laboratory, where PO3 Laut received and turned them over to the forensic chemist, Villalobos, for laboratory examination. The specimen tested positive for marijuana. Afterward, Villalobos gave the seized items to the evidence custodian, PO3 Cavite, who stored the items in the evidence cabinet. There, they were kept until Inspector Malong presented them in court.[55]

Accused-appellant pointed to inconsistencies between the testimonies of PO2 Robrigado and SPO2 Sabas as to who took custody of the seized items after the inventory. He thus argues that they failed to identify who brought the seized items to the police station.[56]

On the contrary, PO2 Robrigado was able to clarify that it was he who took custody over the seized items after the inventory:

> Q: You said you turned over the seized item to Police Officer Sabas for inventory, correct?
> A: Yes, ma'am.
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> Q: And the next time that you get hold of the item was when you retrieved that from the police station of Nabua for you to bring it to the PNP Crime Laboratory, am I right?
> A: Yes, ma'am.
>
> Q: So, it was not you who was in custody of those items from the place of the alleged buy-bust until it was brought to the police station, am I right?
> *A: No, ma'am, because it was returned to me after it was inventoried at the place of the incident and then, immediately after we arrived at the police station, letter requests were made, and after it was signed by the signatories, we brought it to the Crime Laboratory Office.*
>
> Q: Mr. Witness, you also testified last January 31, 2012 and you were asked of the same question and your answer are not the same.

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54 CA *rollo*, p. 41.
55 Id.
56 Id. at 33.

> Let me remind you of your previous answer, the question goes this way "after the conduct of the inventory, what did you do with the specimen?", and you replied, "I turned over it [sic] to Police Officer Sabas of PNP Nabua." That is your answer. And another question was asked, "for what purpose?" "They were the ones who have it received, by police Nabua [sic]." Can you remember saying that?
> A: Yes, ma'am.
>
> Q: So, it is clear from your testimony then that it was not you who brought the items from the scene to the police station because, as you have said, it was Police Officer Sabas who was in custody of the said items, am I right?
> A: Yes, ma'am.
>
> Q: So, I am correct when I asked you earlier that it was not really you who is [sic] in custody of the items from the scene of the alleged buy-bust to the police station, and you only got hold of it [sic] when you brought it [sic] to the Crime Laboratory for examination, correct?
> A: Yes, ma'am.[57] (Emphasis supplied)

It is clear from this testimony that after SPO2 Sabas had inventoried the items, he returned them to PO2 Robrigado.[58] There could be no other conclusion than that, when the police officers returned to the police station, the seized items were in PO2 Robrigado's custody all along. It was also he who brought the seized items and the requests to the Crime Laboratory in Naga City.[59] SPO2 Cleo Sabas confirmed this in his testimony:

> Q: And after having been handed of the plastic sachet, who took custody of that plastic sachet?
> A: After the marking of the plastic sachet, Robregado [sic] was the one who took possession of the plastic sachet, your Honor.
>
> Q: So, when you were preparing the inventory, the plastic sachet containing marijuana has already been pre-marked by Robregado, [sic] correct?
> A: Yes, your Honor.
>
> Q: Then it was turned over to you?
> A: No, your Honor.
>
> Q: It was retained by Robregado [sic]?
> A: Yes, by him, your Honor."
>
> . . . .
>
> Q: You mean to say that from the scene of the incident up to the PNP Headquarters, it was PO2 Robregado who was in custody of the plastic sachet containing marijuana?

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57 Id. at 33–34.
58 Id. at 41.
59 Id.

A: Yes, your Honor.

Q: You were never in possession of that except when you made the inventory.
A: Yes, your Honor.[60]

In *People v. Appegu*:[61]

> Slight contradictions even serve to strengthen the credibility of the witnesses and prove that their testimonies are not rehearsed nor perjured. What is important is the fact that there is a sustained consistency in relating the principal elements of the crime and the positive and categorical identification of accused-appellants as the perpetrators of the crime.
>
> Neither are such inconsistencies and even improbabilities unusual, for there is no person with perfect faculties or senses. An adroit cross-examiner may trap a witness into making statements contradicting his testimony on direct examination. Intensive cross-examination on points not anticipated by a witness and his lawyer may make a witness blurt out statements which do not dovetail even with his own testimony. Yet, if it appears that the same witness has not willfully perverted the truth, as may be gleaned from the tenor of his testimony and the conclusion of the trial judge regarding his demeanor and behavior on the witness stand, his testimony on material points may be accepted.
>
> The Court has recognized that even the most candid of witnesses commit mistakes and make confused and inconsistent statements. . . . Hence, there is more reason to accord them an ample space for inaccuracy. So long as the witnesses' testimonies agree on substantial matters, the inconsequential inconsistencies and contradictions dilute neither the witnesses' credibility nor the verity of their testimonies. When the inconsistency is not an essential element of the crime, such inconsistency is insignificant and can not have any bearing on the essential fact testified to, that is, the killing of the victim.[62] (Citations omitted)

As to PO2 Robrigado's momentary placing of the seized items in his right pocket,[63] accused-appellant claims that this tainted the integrity and identity of the seized items. More reason for doubt, he says, was that PO2 Robrigado wore short pants that had six pockets.[64] Accused-appellant cites *People v. Dela Cruz*,[65] where this Court held:

> The circumstance of PO1 Bobon keeping narcotics in his own pockets precisely underscores the importance of strictly complying with Section 21. His subsequent identification in open court of the items coming out of his own pockets is self-serving.

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60 Id. at 35.
61 429 Phil. 467 (2002) [Per J. Ynares-Santiago, First Division].
62 Id. at 477–478.
63 CA *rollo*, p. 31.
64 Id. at 33.
65 744 Phil. 816 (2014) [Per J. Leonen, Second Division].

> The prosecution effectively admits that from the moment of the supposed buy-bust operation until the seized items' turnover for examination, these items had been in the sole possession of a police officer. In fact, not only had they been in his possession, they had been in such close proximity to him that they had been nowhere else but in his own pockets.
>
> Keeping one of the seized items in his right pocket and the rest in his left pocket is a doubtful and suspicious way of ensuring the integrity of the items. Contrary to the Court of Appeals' finding that PO1 Bobon took the necessary precautions, we find his actions reckless, if not dubious.
>
> Even without referring to the strict requirements of Section 21, common sense dictates that a single police officer's act of bodily-keeping the item(s) which is at the crux of offenses penalized under the Comprehensive Dangerous Drugs Act of 2002, is fraught with dangers. One need not engage in a meticulous counter-checking with the requirements of Section 21 to view with distrust the items coming out of PO1 Bobon's pockets. That the Regional Trial Court and the Court of Appeals both failed to see through this and fell — hook, line, and sinker — for PO1 Bobon's avowals is mind-boggling.
>
> Moreover, PO1 Bobon did so without even offering the slightest justification for dispensing with the requirements of Section 21.[66]

In *Dela Cruz*, custody over the seized item was kept in the officer's pocket for the entire duration of the arrest and seizure. That is not the case here. In this case, PO2 Robrigado only briefly placed the items in his pocket when he chased accused-appellant. When he was apprehended, PO2 Robrigado and the rest of the team marked, inventoried, and photographed the seized items in the presence of the required witnesses.

Moreover, in *Dela Cruz*, the prosecution failed to comply with several other requirements of Section 21. Neither an inventory nor photos of the seized items were taken. None of the required witnesses were present. The seized items were kept in the police officer's pockets from seizure until examination. The officer even separated the seized items—he kept one sachet in his right pocket and the other six sachets in his left pocket. This, on top of the rest, was what caused this Court's concern, for it was "a doubtful and suspicious way of ensuring the integrity of the items."[67]

Again, that is not the case here.

In this case, the prosecution was able to show that the arresting officers complied with Section 21 of Republic Act No. 9165 and that the chain of custody remained unbroken. It established the *corpus delicti*, the second element of the crime.

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66 Id. at 834–835.
67 Id.

Accused-appellant's claim that he was framed is not persuasive. To begin with, he presented no other witness to corroborate his self-serving allegations. In any case, this Court disfavors defenses of denial and frame-up because "such defenses can easily be fabricated and are common ploy in prosecutions for the illegal sale and possession of dangerous drugs."[68] In *People v. Bongalon*:[69]

> As we have earlier stated, the appellant's denial cannot prevail over the positive testimonies of the prosecution witnesses. We are not unaware of the perception that, in some instances, law enforcers resort to the practice of planting evidence to extract information or even to harass civilians. However, *like alibi, frame-up is a defense that has been viewed by the Court with disfavor as it can easily be concocted, hence, commonly used as a standard line of defense in most prosecutions arising from violations of the Dangerous Drugs Act. We realize the disastrous consequences on the enforcement of law and order, not to mention the well-being of society, if the courts, solely on the basis of the policemen's alleged rotten reputation, accept in every instance this form of defense which can be so easily fabricated.* It is precisely for this reason that the legal presumption that official duty has been regularly performed exists.[70] (Emphasis supplied, citation omitted)

To consider this defense, there must first be "clear and convincing evidence that the members of the buy-bust team were inspired by any improper motive or were not properly performing their duty"; otherwise, "their testimonies on the buy-bust operation deserve full faith and credit."[71]

In this case, all the elements of the offense were established beyond reasonable doubt. This Court, therefore, affirms accused-appellant's conviction.

WHEREFORE, the Court of Appeals' April 20, 2016 Decision in CA-G.R. CR-HC No. 07498 is **AFFIRMED**. Accused-appellant Luis Balderama, Jr. y Tangtang is found **GUILTY** beyond reasonable doubt of violating Section 5 of Republic Act No. 9165. He is sentenced to suffer the penalty of life imprisonment and to pay a fine of ₱500,000.00.

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68 *People v. Gonzaga,* 647 Phil. 65, 85 (2010) [Per J. Del Castillo, First Division].
69 425 Phil. 96 (2002) [Per Curiam, En Banc].
70 Id. at 120.
71 *People v. Tion*, 623 Phil 209, 229 (2009) [Per J. Velasco, Jr. First Division], citing *People v. Domingcil,* 464 Phil. 342, 357 (2004) [Per J. Callejo, Sr., Second Division].

SO ORDERED."

By authority of the Court:

MisPDCBatt
MISAEL DOMINGO C. BATTUNG III
Division Clerk of Court
CER
1/5/21

OFFICE OF THE SOLICITOR GENERAL
134 Amorsolo Street
Legaspi Village, 1229 Makati City

COURT OF APPEALS
CA G.R. CR HC No. 07498
1000 Manila

Atty. Michael Joseph D. Cruz
Special & Appealed Cases Service
PUBLIC ATTORNEY'S OFFICE
DOJ Agencies Building
East Avenue cor. NIA Road
Diliman, 1104 Quezon City

The Presiding Judge
REGIONAL TRIAL COURT
Branch 34, 4431 Iriga City
(Crim. Case No. IR-9173)

Mr. Luis Balderama, Jr. y Tangtang
c/o The Director General
BUREAU OF CORRECTIONS
1770 Muntinlupa City

The Superintendent
New Bilibid Prison
BUREAU OF CORRECTIONS
1770 Muntinlupa City

The Director General
BUREAU OF CORRECTIONS
1770 Muntinlupa City

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