



Republic of the Philippines  
 Supreme Court  
 Manila

CERTIFIED TRUE COPY  
*Wilfredo V. Lapidan*  
 WILFREDO V. LAPIDAN  
 Division Clerk of Court  
 Third Division

OCT 29 2018

**THIRD DIVISION**

**PEOPLE OF THE PHILIPPINES,**  
 Plaintiff-Appellee,

**G.R. No. 230721**

**Present:**

PERALTA, J., *Chairperson,*  
 LEONEN,  
 GESMUNDO,\*  
 REYES, J.C., JR., and  
 HERNANDO, JJ.

- versus -

**MONICA JIMENEZ y DELGADO,**  
 Accused-Appellant.

**Promulgated:**

October 15, 2018

x-----  
*Wilfredo V. Lapidan*

**DECISION**

**PERALTA, J.:**

For this Court’s resolution is the appeal from the Court of Appeals’ (CA) Decision<sup>1</sup> dated July 22, 2016 dismissing appellant Monica Jimenez y Delgado’s appeal and affirming the Decision<sup>2</sup> dated January 5, 2015 of the Regional Trial Court (RTC), Branch 203, Muntinlupa City, convicting appellant of Violation of Section 5, Article II, Republic Act (R.A.) No. 9165.

The facts follow.

Around 10:00 a.m. of August 20, 2009, a confidential informant went to the Philippine National Police (PNP) Muntinlupa City, and informed SPO1 Cirilo Zamora, who was then assigned as an anti-drug operative, about illegal

\*\* On vacation leave.

<sup>1</sup> Penned by Associate Justice Romeo F. Barza, with the concurrence of Presiding Justice (now Associate Justice of the Supreme Court) Andres B. Reyes, Jr. and Associate Justice Agnes Reyes-Carpio; *rollo*, pp. 2-16.

<sup>2</sup> Penned by Presiding Judge Myra B. Quiambao; CA *rollo*, pp. 61-71.

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drug activities of a certain “Monik” at Lakeview Homes Subdivision, Putatan, Muntinlupa City. The Chief of Police, PSSUPT Elmer Jamias, was immediately informed of the said report. PSSUPT Jamias instructed the police officers to validate the information, and acting on the said directive, the latter immediately validated and found out that the information was indeed true. Thereafter, PSSUPT Jamias instructed SPO1 Brigido Cardíño, the team leader, to conduct a buy-bust operation. They then coordinated with the Philippine Drug Enforcement Agency (PDEA) and prepared the Pre-Operational Report signed by their Action Officer, SAID-SOTG, PSUPT Eleazar P. Matta. SPO1 Cardíño gave the buy-bust money of ₱1,000.00 to SPO1 Cirilo Zamora who was tasked as the poseur-buyer. SPO1 Zamora marked the right portion of the ₱1,000.00 bill with the initials “CZ” and took a photograph thereof. A briefing was then conducted by SPO1 Cardíño and the operation was recorded in the police blotter. The team, together with the confidential informant, immediately proceeded to Pasong Makipot, Lakeview Homes Subdivision, Putatan, Muntinlupa City, where alias “Monik” instructed the confidential informant to meet her.

The buy-bust team reached the target area at around 8:15 p.m. of August 20, 2009. SPO1 Zamora and the confidential informant went to the waiting shed and waited for “Monik,” while the rest of the team members were scattered within viewing distance. After waiting for more or less five (5) minutes, SPO1 Zamora saw a woman alighting from a tricycle, and immediately the confidential informant told SPO1 Zamora that the said woman was “Monik.” “Monik” proceeded to the waiting shed and asked the confidential informant, “*Kanina pa ba kayo diyan kuya?*” The confidential informant replied, “*Hindi naman. Halos magkasunod lang tayo.*” Thereafter, the confidential informant introduced SPO1 Zamora to “Monik” as a seaman who just arrived and the one who will buy the *shabu* that the confidential informant ordered from her. “Monik” said, “*May pupuntahan pa ako kuya. Asan na yung bayad ninyo sa order ninyo?*” SPO1 Zamora immediately gave “Monik” the buy-bust money. After receiving the money, “Monik” turned around and took something from inside her bra, then turned again and handed a transparent plastic sachet containing white crystalline substance to SPO1 Zamora. SPO1 Zamora, thereafter, executed the pre-arranged signal to his teammates by throwing his lighted cigarette to the ground. PO3 Enrile, the immediate back-up, rushed to the place where SPO1 Zamora and “Monik” were standing, and SPO1 Zamora introduced himself to “Monik” as a police officer. SPO1 Zamora recovered from “Monik” the buy-bust money that was still in her left hand and explained to her her constitutional rights in Filipino.

Thereafter, the team brought “Monik” and the recovered items to their office. It was SPO1 Zamora who was in possession of the transparent plastic sachet and the buy-bust money from the place of arrest until they reached their office. Upon arrival at the office, SPO1 Zamora immediately marked the transparent plastic sachet with “MDJ,” the initials of “Monik,” who was later on identified as herein appellant. SPO1 Zamora proceeded to make an



inventory and marked the recovered evidence at the office because according to the same police officer, it was already dark and the witnesses were waiting at the office. The inventory was witnessed by Eddie B. Guevara and Jemma V. Gonzales, both Drug Abuse and Prosecution Control Office (*DAPCO*) employees. After the inventory, a Request for Laboratory Examination on Seized Evidence was prepared and signed by SPO1 Cardíño which was delivered, together with the plastic sachet, to the SPD Crime Laboratory by SPO1 Zamora and PO2 Genova. SPO1 Zamora handed the transparent plastic sachet to SPO1 Miriam Santos at the SPD Crime Laboratory. According to SPO1 Zamora, since he left his ID card inside his car during the buy-bust operation, it was PO2 Genova who gave his ID card to SPO1 Santos for recording. Based on the laboratory examination conducted by Police Chief Inspector (*PCI*) Richard Allan Mangalip, the substance found inside the plastic sachet yielded a positive result for the presence of methylamphetamine hydrochloride, a dangerous drug.

Thus, an Information was filed against the appellant for violation of Section 5, Article II of R.A. No. 9165, the accusatory portion of which reads:

That on or about the 20<sup>th</sup> day of August, 2009, in the City of Muntinlupa, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, not being authorized by law, did then and there willfully, unlawfully and feloniously sell, deliver and give away to another Methylamphetamine hydrochloride, a dangerous drug, contained in one (1) heat-sealed transparent plastic sachet weighing 0.03 gram, in violation of the above-cited law.

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


During arraignment, appellant entered a plea of “not guilty.”

The prosecution presented the testimony of SPO1 Zamora. The parties entered into stipulations on the identity of the accused, on the jurisdiction of the court over the place where she was arrested and on the existence, due execution and accuracy of Physical Science Report No. D-402-098. The parties also dispensed with the testimonies of Forensic Chemist PCI Mangalip, Receiving Officer SPO1 Santos and Evidence Custodian PO3 Aries Abian.

Appellant denied the allegation against her. According to her, on August 20, 2009, around 4:00 p.m., she was on board a tricycle going to Lakeview Homes, *Barangay* Putatan, Muntinlupa City, to visit her boyfriend. When she alighted from the tricycle, there were a lot of people at the waiting shed in the corner of Pasong Makipot, Lakeview Homes. She noticed that there was a commotion and, thereafter, three (3) men approached her and asked if she was from that place, to which she replied in the negative. The men said, “*Isama*

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<sup>3</sup> *Rollo*, p. 3.



'to." She was not aware if the men were police officers and asked them why they were accosting her. The men told her that they will just inquire if she knows anyone from Pasing Makipot. Appellant answered in the affirmative. The men again said, "*Isama to,*" and proceeded to board the appellant inside a white Revo. The men were later on identified as SPO1 Zamora and PO2 Genova. While inside the vehicle, SPO1 Zamora and PO2 Genova asked her name and residence, and if she knew anyone selling drugs, to which she replied in the negative. SPO1 Zamora and PO2 Genova became angry and threatened her that if she did not cooperate, they will detain her. She was brought under the bridge in Alabang, in front of Metropolis, and while inside the vehicle, the two policemen kept asking her about her job and parents. Appellant informed them that her father is already dead and that her mother was jobless, and that the only one working is her brother. The two policemen insisted that she cooperate, which appellant refused to do. Then SPO1 Zamora demanded money from her. Thereafter, the two policemen brought appellant to their headquarters after staying under the bridge in Alabang for 45 minutes. Appellant and SPO1 Zamora stayed at the parking lot of the headquarters, while PO2 Genova alighted from the vehicle upon the other police officer's instruction to check who was inside their office. PO2 Genova returned and informed SPO1 Zamora that PO3 Enrile was inside the office. SPO1 Zamora and the appellant alighted from the vehicle and proceeded to the second floor of the headquarters. SPO1 Zamora, PO2 Genova and another man wearing black were trying to figure out who among them would be the arresting officer. SPO1 Zamora said that he always acts as the arresting officer and it is now the turn of PO2 Genova. PO2 Genova laughed and said that SPO1 Zamora should be the arresting officer, to which the latter agreed, with PO3 Enrile as the back-up. PO2 Genova then asked SPO1 Zamora where the drugs and the buy-bust money are. SPO1 Zamora went to a drawer and took out a transparent sachet and a ₱1,000.00 bill. SPO1 Zamora told the appellant that those were the items recovered from her. SPO1 Zamora then asked the man wearing black for a marking pen and proceeded to take photographs of the plastic sachet and the money. PO2 Genova, who was then typing, called appellant and interviewed her. SPO1 Zamora then instructed PO2 Genova to invent a story on how they arrested appellant. Appellant asked that she be allowed to call her family, but she was told to wait. Thereafter, PO3 Enrile approached appellant and asked about her family and also told her to give money in exchange for her release. PO2 Genova eventually allowed appellant to call her mother over the phone. Appellant's mother arrived at the headquarters around 8:00 p.m. Appellant further said that SPO1 Zamora demanded ₱100,000.00 from her mother and when her mother failed to give the money, she was brought to the Fiscal's office the following day.

The RTC found appellant guilty beyond reasonable doubt of the crime charged against her, thus:



WHEREFORE, premises considered, the Court finds accused Monica Jimenez y Delgado a.k.a. Monik guilty beyond reasonable doubt of violation of Section 5, Article II of R.A. No. 9165 and hereby sentences her to life imprisonment and a fine of P500,000.00.

The preventive imprisonment undergone by the accused shall be credited in her favor.

The Branch Clerk of Court is directed to turn-over the methylamphetamine hydrochloride and the P1,000.00 buy-bust money subject of this case to the Philippine Drug Enforcement Agency (PDEA) for proper disposition.

SO ORDERED.<sup>4</sup>

As ruled by the RTC, the prosecution was able to establish that there was a buy-bust operation and that appellant was validly arrested during the conduct of the said operation. It was also held that the prosecution was able to prove the presence of all the elements of the crime charged against appellant. Finally, the RTC ruled that less than strict compliance with the procedural aspect of the chain of custody rule does not necessarily render the seized item inadmissible.

The CA affirmed the decision of the RTC, thus:

WHEREFORE, the instant appeal is hereby DISMISSED. The appealed decision of the RTC-Branch 203, Muntinlupa City, in Criminal Case No. 09-744 finding MONICA D. JIMENEZ guilty beyond reasonable doubt of violation of Section 5, Article II of R.A. No. 9165, and sentencing her to life imprisonment and fine of Php500,000.00 is hereby AFFIRMED.

SO ORDERED.<sup>5</sup>

The CA ruled that all the elements of the offense charged against appellant was duly proven by the prosecution. The appellate court also held that the members of the PNP Muntinlupa City conducted a valid buy-bust operation against appellant, hence, her warrantless arrest cannot be considered as invalid. The same court further ruled that the non-compliance of Section 21 of R.A. No. 9165 is not fatal and will not render appellant's arrest illegal, or make the item seized inadmissible where there is no elected official, representative from the media and the DOJ were present during the inventory; what is of outmost importance is the preservation of the integrity and evidentiary value of the seized item.

Hence, the present appeal.

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<sup>4</sup> CA rollo, p. 71.

<sup>5</sup> Rollo, p. 15.

The errors presented in this appeal are the following:

I.

THE TRIAL COURT GRAVELY ERRED IN NOT FINDING THE ACCUSED-APPELLANT'S WARRANTLESS ARREST AS ILLEGAL.

II.

THE TRIAL COURT GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY DESPITE THE POLICE OFFICERS' NON-COMPLIANCE WITH SECTION 21 OF REPUBLIC ACT NO. 9165 AND ITS IMPLEMENTING RULES AND REGULATIONS.

III.

THE TRIAL COURT GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY DESPITE THE BROKEN CHAIN OF CUSTODY OF THE ALLEGEDLY CONFISCATED SHABU.<sup>6</sup>

According to appellant, her warrantless arrest is invalid because she was merely alighting from a tricycle and walking a few steps, acts that could not be synonymous with peddling dangerous drugs, when she was accosted for questioning. She further contends that the provisions under Section 21 of R.A. No. 9165 to ensure an unbroken chain of custody was not followed. Appellant insists that the allegedly seized item was not immediately marked, inventoried and photographed upon her supposed apprehension. She also claims that the same was not done in the presence of a representative from the Department of Justice (*DOJ*), the media and any elected official who were required to be present thereon and sign the copies of the inventory and be given a copy thereof.

The Office of the Solicitor General (*OSG*), in its Brief for the Plaintiff-Appellee, argues that appellant's warrantless arrest was validly enforced because the appellant was caught *in flagrante delicto*. The *OSG* also contends that there was substantial compliance with R.A. No. 9165 and its Implementing Rules with respect to the custody and disposition of the seized dangerous drugs.

There is merit in the appeal.

The argument of appellant that the arresting officers illegally arrested her, because they did not have with them any warrant of arrest nor a search warrant, does not deserve any merit. Buy-bust operations are legally sanctioned procedures for apprehending drug peddlers and distributors. These operations are often utilized by law enforcers for the purpose of trapping and capturing lawbreakers in the execution of their nefarious activities.<sup>7</sup> There is

<sup>6</sup> CA rollo, pp. 47-49.

<sup>7</sup> *People v. Rebotazo*, 711 Phil. 150, 162 (2013).

no textbook method of conducting buy-bust operations. A prior surveillance, much less a lengthy one, is not necessary, especially where the police operatives are accompanied by their informant during the entrapment.<sup>8</sup> Hence, the said buy-bust operation is a legitimate, valid entrapment operation.

This Court, however, finds that the prosecution failed to prove the guilt of the appellant beyond reasonable doubt.

Under Section 5, Article II of R.A. No. 9165, or illegal sale of prohibited drugs, in order to be convicted of the said violation, the following must concur:

(1) the identity of the buyer and the seller, the object of the sale and its consideration; and (2) the delivery of the thing sold and the payment therefor.<sup>9</sup>

In illegal sale of dangerous drugs, it is necessary that the sale transaction actually happened and that "the [procured] object is properly presented as evidence in court and is shown to be the same drugs seized from the accused."<sup>10</sup>

In illegal sale, the illicit drugs confiscated from the accused comprise the *corpus delicti* of the charge.<sup>11</sup> In *People v. Gatlabayan*,<sup>12</sup> the Court held that "it is of paramount importance that the identity of the dangerous drug be established beyond reasonable doubt; and that it must be proven with certitude that the substance bought during the buy-bust operation is exactly the same substance offered in evidence before the court. In fine, the illegal drug must be produced before the court as exhibit and that which was exhibited must be the very same substance recovered from the suspect."<sup>13</sup> Thus, the chain of custody carries out this purpose "as it ensures that unnecessary doubts concerning the identity of the evidence are removed."<sup>14</sup>

To ensure an unbroken chain of custody, Section 21(1) of R.A. No. 9165 specifies:

(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>8</sup> See *People v. Manlangit*, 654 Phil. 427, 437 (2011).

<sup>9</sup> *People v. Ismael y Raclang*, G.R. No. 208093, February 20, 2017.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> 699 Phil. 240, 252 (2011).

<sup>13</sup> *People v. Mirondo*, 771 Phil. 345, 356-357 (2015).

<sup>14</sup> See *People v. Ismael y Radang*, *supra* note 9.



Supplementing the above-quoted provision, Section 21(a) of the Implementing Rules and Regulations (*IRR*) of R.A. No. 9165 provides:

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

On July 15, 2014, R.A. No. 10640<sup>15</sup> was approved to amend R.A. No. 9165. Among other modifications, it essentially incorporated the saving clause contained in the *IRR*, thus:

(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.

In her Sponsorship Speech on Senate Bill No. 2273, which eventually became R.A. No. 10640, Senator Grace Poe admitted that "while Section 21 was enshrined in the Comprehensive Dangerous Drugs Act to safeguard the integrity of the evidence acquired and prevent planting of evidence, the

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<sup>15</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."





application of said Section resulted in the ineffectiveness of the government's campaign to stop increasing drug addiction and also, in the conflicting decisions of the courts."<sup>16</sup> Specifically, she cited that "compliance with the rule on witnesses during the physical inventory is difficult. For one, media representatives are not always available in all corners of the Philippines, especially in more remote areas. For another, there were instances where elected *barangay* officials themselves were involved in the punishable acts apprehended."<sup>17</sup> In addition, "[t]he requirement that inventory is required to be done in a police station is also very limiting. Most police stations appeared to be far from locations where accused persons were apprehended."<sup>18</sup>

Similarly, Senator Vicente C. Sotto III manifested that in view of the substantial number of acquittals in drug-related cases due to the varying interpretations of the prosecutors and the judges on Section 21 of R.A. No. 9165, there is a need for "certain adjustments so that we can plug the loopholes in our existing law" and "ensure [its] standard implementation."<sup>19</sup> In his Co-sponsorship Speech, he noted:

Numerous drug trafficking activities can be traced to operations of highly organized and powerful local and international syndicates. The presence of such syndicates that have the resources and the capability to mount a counter-assault to apprehending law enforcers makes the requirement of Section 21(a) impracticable for law enforcers to comply with. It makes the place of seizure extremely unsafe for the proper inventory and photograph of seized illegal drugs.

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Section 21(a) of RA 9165 needs to be amended to address the foregoing situation. We did not realize this in 2002 where the safety of the law enforcers and other persons required to be present in the inventory and photography of seized illegal drugs and the preservation of the very existence of seized illegal drugs itself are threatened by an immediate retaliatory action of drug syndicates at the place of seizure. The place where the seized drugs may be inventoried and photographed has to include a location where the seized drugs as well as the persons who are required to be present during the inventory and photograph are safe and secure from extreme danger.

It is proposed that the physical inventory and taking of photographs of seized illegal drugs be allowed to be conducted either in the place of seizure or at the nearest police station or office of the apprehending law enforcers. The proposal will provide effective measures to ensure the integrity of seized illegal drugs since a safe location makes it more probable for an inventory and photograph of seized illegal drugs to be properly conducted, thereby reducing the incidents of dismissal of drug cases due to technicalities.

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<sup>16</sup> Senate Journal, Session No. 80, 16<sup>th</sup> Congress, 1st Regular Session, June 4, 2014, p. 348.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.* at 349.

Non-observance of the prescribed procedures should not automatically mean that the seizure or confiscation is invalid or illegal, as long as the law enforcement officers could justify the same and could prove that the integrity and the evidentiary value of the seized items are not tainted. This is the effect of the inclusion in the proposal to amend the phrase "justifiable grounds." There are instances wherein there are no media people or representatives from the DOJ available and the absence of these witnesses should not automatically invalidate the drug operation conducted. Even the presence of a public local elected official also is sometimes impossible especially if the elected official is afraid or scared.<sup>20</sup>

The foregoing legislative intent has been taken cognizance of in a number of cases. Just recently, We opined in *People v. Miranda*:<sup>21</sup>

The Court, however, clarified that under varied field conditions, strict compliance with the requirements of Section 21 of RA 9165 may not always be possible. In fact, the Implementing Rules and Regulations (IRR) of RA 9165 – which is now crystallized into statutory law with the passage of RA 10640 – provide that the said inventory and photography may be conducted at the nearest police station or office of the apprehending team in instances of warrantless seizure, and that non-compliance with the requirements of Section 21 of RA 9165 – under justifiable grounds – will not render void and invalid the seizure and custody over the seized items so long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending officer or team. Tersely put, the failure of the apprehending team to strictly comply with the procedure laid out in Section 21 of RA 9165 and the IRR does not ipso facto render the seizure and custody over the items as void and invalid, provided that the prosecution satisfactorily proves that: (a) there is justifiable ground for non-compliance; and (b) the integrity and evidentiary value of the seized items are properly preserved. In *People v. Almorfe*, the Court stressed that for the above-saving clause to apply, the prosecution must explain the reasons behind the procedural lapses, and that the integrity and value of the seized evidence had nonetheless been preserved. Also, in *People v. De Guzman*, it was emphasized that the justifiable ground for non-compliance must be proven as a fact, because the Court cannot presume what these grounds are or that they even exist.<sup>22</sup>

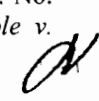
Under the original provision of Section 21, after seizure and confiscation of the drugs, the apprehending team was required to immediately conduct a physical inventory and photograph of the same in the presence of (1) the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, (2) a representative from the media **and** (3) the DOJ, and (4) any elected public official who shall be

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<sup>20</sup> *Id.* at 349-350.

<sup>21</sup> G.R. No. 229671, January 31, 2018.

<sup>22</sup> See also *People v. Paz*, G.R. No. 229512, January 31, 2018; *People v. Mamangon*, G.R. No. 229102, January 29, 2018; *People v. Jugo*, G.R. No. 231792, January 29, 2018; *People v. Calibod*, G.R. No. 230230, November 20, 2017; *People v. Ching*, G.R. No. 223556, October 9, 2017; *People v. Geronimo*, G.R. No. 225500, September 11, 2017; *People v. Ceralde*, G.R. No. 228894, August 7, 2017; and *People v. Macapundag*, G.R. No. 225965, March 13, 2017.



required to sign the copies of the inventory and be given a copy thereof. It is assumed that the presence of these three persons will guarantee “against planting of evidence and frame-up,” *i.e.*, they are “necessary to insulate the apprehension and incrimination proceedings from any taint of illegitimacy or irregularity.”<sup>23</sup> Now, the amendatory law mandates that the conduct of physical inventory and photograph of the seized items must be in the presence of (1) the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, (2) with an elected public official and (3) a representative of the National Prosecution Service or the media who shall sign the copies of the inventory and be given a copy thereof. In the present case, the old provisions of Section 21 and its IRR shall apply since the alleged crime was committed before their amendment by R.A. No. 10640.

In this case, it is undeniable that during the conduct of physical inventory and photograph of the seized items, there were no representatives from the media and the DOJ, and there was also no elected public official to witness the said inventory. As shown in the Certificate of Inventory, and through the testimony of SPO1 Zamora, aside from the latter and PO3 Enrile, there were only two members of DAPCO who signed the inventory and who were not even present during the buy-bust operation, thus:

Q: So you said that the witnesses who are members of DAPCO are late in your buy bust operation?

A: Yes, ma'am.

Q: They signed as witnesses to the inventory but they did not even see how you seized those items from the accused. Am I correct?

A: Yes, ma'am, because they were late.<sup>24</sup>

The records are also bereft of any indication as to the reason why the witnesses required under the law were dispensed with. In *People v. Romy Lim*,<sup>25</sup> this Court held that the presence of the three witnesses to the physical inventory and photograph must be alleged and proved, thus:

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

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<sup>23</sup> *People v. Sagana*, G.R. No. 208471, August 2, 2017.

<sup>24</sup> TSN, February 8, 2011, p. 33.

<sup>25</sup> G.R. No. 231989, September 4, 2018.

DOJ or media representative and elected public official within the period required under Article 125 of the Revised Penal Code could 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.

Earnest effort to secure the attendance of the necessary witnesses must be proven. *People v. Ramos* requires:

It is well to note that the absence of these required witnesses does not per se render the confiscated items inadmissible. However, a justifiable reason for such failure or a showing of any genuine and sufficient effort to secure the required witnesses under Section 21 of RA 9165 must be adduced. In *People v. Umipang*, the Court held that the prosecution must show that earnest efforts were employed in contacting the representatives enumerated under the law for "a sheer statement that representatives were unavailable without so much as an explanation on whether serious attempts were employed to look for other representatives, given the circumstances is to be regarded as a flimsy excuse." Verily, mere statements of unavailability, absent actual serious attempts to contact the required witnesses are unacceptable as justified grounds for non-compliance. These considerations arise from the fact that police officers are ordinarily given sufficient time - beginning from the moment they have received the information about the activities of the accused until the time of his arrest — to prepare for a buy-bust operation and consequently, make the necessary arrangements beforehand knowing full well that they would have to strictly comply with the set procedure prescribed in Section 21 of RA 9165. As such, police officers are compelled not only to state reasons for their non-compliance, but must in fact, also convince the Court that they exerted earnest efforts to comply with the mandated procedure, and that under the given circumstances, their actions were reasonable.

Certainly, the prosecution bears the burden of proof to show valid cause for non-compliance with the procedure laid down in Section 21 of R.A. No. 9165, as amended.<sup>26</sup> It has the positive duty to demonstrate observance thereto in such a way that, during the proceedings before the trial court, it must initiate in acknowledging and justifying any perceived deviations from the requirements of the law.<sup>27</sup> Its failure to follow the mandated procedure must be adequately explained and must be proven as a fact in accordance with the rules on evidence. The rules require that the apprehending officers do not simply mention a justifiable ground, but also clearly state this ground in their

<sup>26</sup> See *People v. Macapundag*, *supra* note 22.

<sup>27</sup> See *People v. Miranda*, *supra* note 21; *People v. Paz*, *supra* note 22; *People v. Mamangon*, *supra* note 22; and *People v. Jugo*, *supra* note 22.

sworn affidavit, coupled with a statement on the steps they took to preserve the integrity of the seized item.<sup>28</sup> A stricter adherence to Section 21 is required where the quantity of illegal drugs seized is miniscule, since it is highly susceptible to planting, tampering, or alteration.<sup>29</sup>


If doubt surfaces on the sufficiency of the evidence to convict, regardless that it does only at the stage of an appeal, our courts of justice should nonetheless rule in favor of the accused, lest it betray its duty to protect individual liberties within the bounds of law.<sup>30</sup>

Absent, therefore, any justifiable reason in this case for the non-compliance of Section 21 of R.A. No. 9165, the identity of the seized item has not been established beyond reasonable doubt.

**WHEREFORE**, premises considered, the Court of Appeals' Decision dated July 22, 2016, affirming the Decision dated January 5, 2015 of the Regional Trial Court, Branch 203, Muntinlupa City, convicting appellant Monica Jimenez y Delgado of Violation of Section 5, Article II, Republic Act No. 9165, is **REVERSED AND SET ASIDE**. The same appellant is **ACQUITTED** for failure of the prosecution to prove her guilt beyond reasonable doubt. She is **ORDERED IMMEDIATELY RELEASED** from detention, unless she is confined for any other lawful cause. Let entry of final judgment be issued immediately.

Let a copy of this Decision be furnished to the Superintendent of the Correctional Institution for Women, for immediate implementation. Said Superintendent is **ORDERED** to **REPORT** to this Court within five (5) working days from receipt of this Decision the action he/she has taken.

**SO ORDERED.**

  
**DIOSDADO M. PERALTA**  
Associate Justice

<sup>28</sup> *People v. Saragena*, G.R. No. 210677, August 23, 2017.

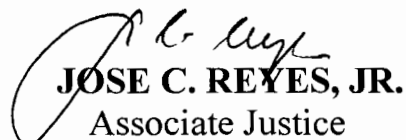
<sup>29</sup> See *People v. Abelarde*, G.R. No. 215713, January 22, 2018; *People v. Macud*, G.R. No. 219175, December 14, 2017; *People v. Arposeple*, G.R. No. 205787, November 22, 2017; *Aparente v. People*, G.R. No. 205695, September 27, 2017; *People v. Cabellon*, G.R. No. 207229, September 20, 2017; *People v. Saragena*, *supra* note 28; *People v. Saunar*, G.R. No. 207396, August 9, 2017; *People v. Sagana*, *supra* note 23; *People v. Segundo*, G.R. No. 205614, July 26, 2017; and *People v. Jaafar*, 803 Phil. 582, 591 (2017).

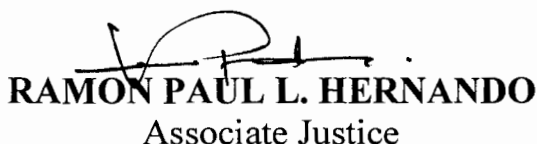
<sup>30</sup> *People v. Miranda*, *supra* note 21.

**WE CONCUR:**

  
**MARVIC M. V. F. LEONEN**  
 Associate Justice

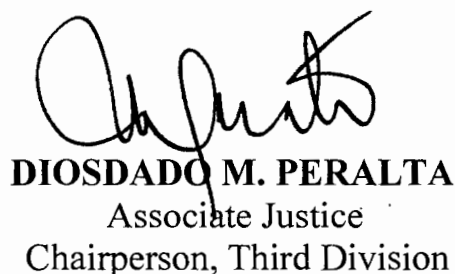
On vacation leave  
**ALEXANDER G. GESMUNDO**  
 Associate Justice

  
**JOSE C. REYES, JR.**  
 Associate Justice

  
**RAMON PAUL L. HERNANDO**  
 Associate Justice

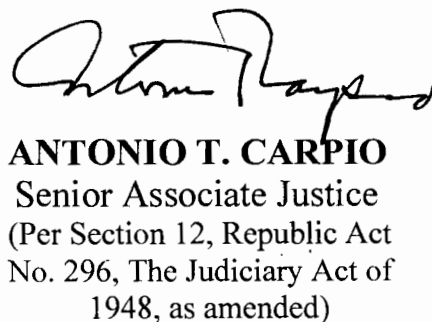
**ATTESTATION**

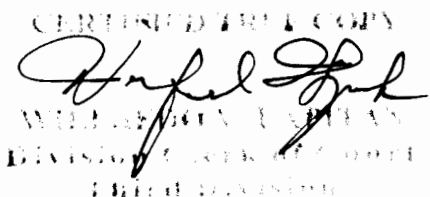
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

  
**DIOSDADO M. PERALTA**  
 Associate Justice  
 Chairperson, Third Division

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

  
**ANTONIO T. CARPIO**  
 Senior Associate Justice  
 (Per Section 12, Republic Act  
 No. 296, The Judiciary Act of  
 1948, as amended)

CERTIFIED TRUE COPY  
  
 WILLFREDO L. MARIANO  
 DIVISION CLERK OF COURT  
 THIRD DIVISION