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G.R. No. 231989: PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee*, v.
ROMY LIM y MIRANDA, *Accused-Appellant*.

Promulgated:

September 4, 2018

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CONCURRING OPINION

LEONEN, J.:

The failure of law enforcement officers to comply with the chain of custody requirements spelled out in Section 21 of Republic Act No. 9165 (otherwise known as the Comprehensive Dangerous Drugs Act of 2002), as amended, coupled with a failure to show justifiable grounds for their non-compliance engenders reasonable doubt on the guilt of persons from whom illegal drugs and drug paraphernalia were supposedly seized. Acquittal must then ensue. This is especially true in arrests and seizures occasioned by buy-bust operations, which, by definition, are preplanned, deliberately arranged or calculated operations.

Asserting proper compliance with chain of custody requirements—and the ensuing acquittal of an accused due to the law enforcement officers' unjustified non-compliance—is not a matter of calibrating jurisprudence. It is merely a matter of applying the clear text of the Comprehensive Dangerous Drugs Act.

I concur that the accused-appellant, Romy Lim, must be acquitted on account of reasonable doubt.

I

Conviction in criminal actions requires proof beyond reasonable doubt. Rule 133, Section 2 of the Revised Rules on Evidence spells out this requisite quantum of proof:

Section 2. Proof beyond reasonable doubt. — In a criminal case, the accused is entitled to an acquittal, unless his guilt is shown beyond reasonable doubt. Proof beyond reasonable doubt does not mean such a degree of proof, excluding possibility of error, produces absolute certainty.



Moral certainty only is required, or that degree of proof which produces conviction in an unprejudiced mind.

Proof beyond reasonable doubt is ultimately a matter of conscience. Though it does not demand absolutely impervious certainty, it still charges the prosecution with the immense responsibility of establishing moral certainty. Much as it ensues from benevolence, it is not merely engendered by abstruse ethics or esoteric values; it arises from a constitutional imperative:


This rule places upon the prosecution the task of establishing the guilt of an accused, relying on the strength of its own evidence, and not banking on the weakness of the defense of an accused. Requiring proof beyond reasonable doubt finds basis not only in the due process clause of the Constitution, but similarly, in the right of an accused to be “presumed innocent until the contrary is proved.” “Undoubtedly, it is the constitutional presumption of innocence that lays such burden upon the prosecution.” Should the prosecution fail to discharge its burden, it follows, as a matter of course, that an accused must be acquitted. As explained in *Basilio v. People of the Philippines*:

We ruled in *People v. Ganguso*:

An accused has in his favor the presumption of innocence which the Bill of Rights guarantees. Unless his guilt is shown beyond reasonable doubt, he must be acquitted. This reasonable doubt standard is demanded by the due process clause of the Constitution which protects the accused from conviction except upon proof beyond reasonable doubt of every fact necessary to constitute the crime with which he is charged. The burden of proof is on the prosecution, and unless it discharges that burden the accused need not even offer evidence in his behalf, and he would be entitled to an acquittal. Proof beyond reasonable doubt does not, of course, mean such degree of proof as, excluding the possibility of error, produce absolute certainty. Moral certainty only is required, or that degree of proof which produces conviction in an unprejudiced mind. The conscience must be satisfied that the accused is responsible for the offense charged.

Well-entrenched in jurisprudence is the rule that the conviction of the accused must rest, not on the weakness of the defense, but on the strength of the prosecution. The burden is on the prosecution to prove guilt beyond reasonable doubt, not on the accused to prove his innocence.¹

¹ *Macayan, Jr. v. People*, 756 Phil. 202, 213–214 (2015) [Per J. Leonen, Second Division], citing CONST, (1987), Art. III, Sec. 1; CONST, (1987), Art. III, Sec. 14(2); *People of the Philippines v. Solayao*, 330 Phil. 811, 819 (1996) [Per J. Romero, Second Division]; and *Basilio v. People of the Philippines*, 591 Phil. 508, 521–522 (2008) [Per J. Velasco, Jr., Second Division].



II

The requisites that must be satisfied to sustain convictions for illegal sale of dangerous drugs under Section 5 of the Comprehensive Dangerous Drugs Act are settled.

In actions involving the illegal sale of dangerous drugs, the following elements must first be established: (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.² (Emphasis in the original, citation omitted)

On the second element of *corpus delicti*, Section 21 of the Comprehensive Dangerous Drugs Act, as amended by Republic Act No. 10640, spells out requirements for the custody and disposition of confiscated, seized, and/or surrendered drugs and/or drug paraphernalia. Section 21 (1) to (3) stipulate requirements concerning custody prior to the filing of a criminal case:

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:

- (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*

² *People v. Morales y Midarasa*, 630 Phil. 215 (2010) [Per !. Del Castillo, Second Division].

apprehending officer/team, shall not render void and invalid such seizures and custody over said items.

- (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;
- (3) A certification of the forensic laboratory examination results, which shall be done by the forensic laboratory examiner, shall be issued immediately upon the receipt of the subject item/s: *Provided*, That when the volume of 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 immediately upon completion of the said examination and certification[.] (Emphasis supplied)

*People v. Nandi*³ thus, summarized that four (4) links “should be established in the chain of custody of the confiscated item: *first*, 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.”⁴

*People v. Morales y Midarasa*⁵ explained that “failure to comply with Paragraph 1, Section 21, Article II of RA 9165 implie[s] a concomitant failure on the part of the prosecution to establish the identity of the *corpus delicti*[.]”⁶ It “produce[s] doubts as to the origins of the [seized paraphernalia].”⁷

Compliance with Section 21’s chain of custody requirements ensures the integrity of the seized items. Conversely, non-compliance with it tarnishes the credibility of the *corpus delicti* around which prosecutions under the Comprehensive Dangerous Drugs Act revolve. Consequently,

³ 639 Phil. 134 (2010) [Per J. Mendoza, Second Division].

⁴ Id. at 144–145, citing *People v. Kamad*, 624 Phil. 289, 304 (2010) [Per J. Brion, Second Division].

⁵ 630 Phil. 215 (2010) [Per J. Del Castillo, Second Division].

⁶ Id. at 229.

⁷ *People v. Laxa*, 414 Phil. 156, 170 (2001) [Per J. Mendoza, Second Division], as cited in *People v. Orteza*, 555 Phil. 700, 708 (2007) [Per J. Tinga, Second Division].

they also tarnish the very claim that an offense against the Comprehensive Dangerous Drugs Act was committed.

Fidelity to chain of custody requirements is necessary because, by nature, narcotics may easily be mistaken for everyday objects. Chemical analysis and detection through methods that exceed human sensory perception (such as, specially trained canine units and screening devices) are often needed to ascertain the presence of dangerous drugs. The physical similarity of narcotics with everyday objects facilitates their adulteration and substitution. It also makes conducive the planting of evidence. In *Mallillin v. People*.⁸

*A unique characteristic of narcotic substances is that they are not readily identifiable as in fact they are subject to scientific analysis to determine their composition and nature. The Court cannot reluctantly close its eyes to the likelihood, or at least the possibility, that at any of the links in the chain of custody over the same there could have been tampering, alteration or substitution of substances from other cases — by accident or otherwise — in which similar evidence was seized or in which similar evidence was submitted for laboratory testing. Hence, in authenticating the same, a standard more stringent than that applied to cases involving objects which are readily identifiable must be applied, a more exacting standard that entails a chain of custody of the item with sufficient completeness if only to render it improbable that the original item has either been exchanged with another or been contaminated or tampered with.*⁹ (Emphasis supplied)

People v. Holgado, et al.,¹⁰ recognized that:

Compliance with the chain of custody requirement . . . ensures the integrity of confiscated, seized, and/or surrendered drugs and/or drug paraphernalia in four (4) respects: first, the nature of the substances or items seized; second, the quantity (*e.g.*, weight) of the substances or items seized; third, the relation of the substances or items seized to the incident allegedly causing their seizure; and fourth, the relation of the substances or items seized to the person/s alleged to have been in possession of or peddling them. Compliance with this requirement forecloses opportunities for planting, contaminating, or tampering of evidence in any manner.”¹¹

When the identity of *corpus delicti* is jeopardized by non-compliance with Section 21, the second element of the offense of illegal sale of dangerous drugs remains wanting. It follows then, that this non-compliance justifies an accused’s acquittal. In *People v. Lorenzo*:¹²

⁸ 576 Phil. 576 (2008) [Per J. Tinga, Second Division].

⁹ Id. at 588–589.

¹⁰ 741 Phil. 78 (2014) [Per J. Leonen, Third Division].

¹¹ Id. at 93.

¹² 633 Phil. 393 (2010) [Per J. Perez, Second Division].

In both illegal sale and illegal possession of prohibited drugs, *conviction cannot be sustained if there is a persistent doubt on the identity of the drug.* The identity of the prohibited drug must be established with moral certainty. Apart from showing that the elements of possession or sale are present, *the fact that the substance illegally possessed and sold in the first place is the same substance offered in court as exhibit must likewise be established with the same degree of certitude as that needed to sustain a guilty verdict.*¹³ (Emphasis supplied)

III

As against the objective requirements imposed by statute, guarantees coming from the prosecution concerning the identity and integrity of seized items are naturally designed to advance the prosecution's own cause. These guarantees conveniently aim to knock two targets with one blow. First, they insist on a showing of *corpus delicti* divorced from statutory impositions and based on standards entirely the prosecution's own. Second, they justify non-compliance by summarily pleading their own assurance. These self-serving assertions cannot justify a conviction.

Even the customary presumption of regularity in the performance of official duties cannot suffice. *People v. Kamad*¹⁴ explained that the presumption of regularity applies only when officers have shown compliance with "the standard conduct of official duty required by law[.]"¹⁵ It is not a justification for dispensing with such compliance:

Given the flagrant procedural lapses the police committed in handling the seized *shabu* and the obvious evidentiary gaps in the chain of its custody, a presumption of regularity in the performance of duties cannot be made in this case. *A presumption of regularity in the performance of official duty is made in the context of an existing rule of law or statute authorizing the performance of an act or duty or prescribing a procedure in the performance thereof. The presumption applies when nothing in the record suggests that the law enforcers deviated from the standard conduct of official duty required by law; where the official act is irregular on its face, the presumption cannot arise.* In light of the flagrant lapses we noted, the lower courts were obviously wrong when they relied on the presumption of regularity in the performance of official duty.

We rule, too, that the discrepancy in the prosecution evidence on the identity of the seized and examined *shabu* and that formally offered in court cannot but lead to serious doubts regarding the origins of the *shabu* presented in court. This discrepancy and the gap in the chain of custody immediately affect proof of the *corpus delicti* without which the accused must be acquitted.

¹³ Id. at 403.

¹⁴ 624 Phil. 289 (2010) [Per J. Brion, Second Division].

¹⁵ Id. at 311.

From the constitutional law point of view, the prosecution's failure to establish with moral certainty all the elements of the crime and to identify the accused as the perpetrator signify that it failed to overturn the constitutional presumption of innocence that every accused enjoys in a criminal prosecution. When this happens, as in this case, the courts need not even consider the case for the defense in deciding the case; a ruling for acquittal must forthwith issue.¹⁶ (Emphasis supplied, citation omitted)

Jurisprudence has thus been definite on the consequence of non-compliance. This Court has categorically stated that whatever presumption there is concerning the regularity of the manner by which officers gained and maintained custody of the seized items is "negate[d]":¹⁷

In *People v. Orteza*, the Court did not hesitate to strike down the conviction of the therein accused for failure of the police officers to observe the procedure laid down under the Comprehensive Dangerous Drugs Law, thus:

First, there appears nothing in the records showing that police officers complied with the proper procedure in the custody of seized drugs as specified in *People v. Lim*, *i.e.*, any apprehending team having initial control of said drugs and/or paraphernalia should, immediately after seizure or confiscation, have the same physically inventoried and photographed in the presence of the accused, if there be any, and or his representative, who shall be required to sign the copies of the inventory and be given a copy thereof. The failure of the agents to comply with the requirement raises doubt whether what was submitted for laboratory examination and presented in court was actually recovered from appellant. *It negates the presumption that official duties have been regularly performed by the police officers.*

....

IN FINE, *the unjustified failure of the police officers to show that the integrity of the object evidence-shabu was properly preserved negates the presumption of regularity accorded to acts undertaken by police officers in the pursuit of their official duties.*¹⁸ (Emphasis supplied, citations omitted)

The Comprehensive Dangerous Drugs Act requires nothing less than strict compliance. Otherwise, the *raison d'être* of the chain of custody requirement is compromised. Precisely, deviations from it leave open the door for tampering, substitution and planting of evidence.

¹⁶ *Id.*

¹⁷ *People v. Navarrete*, 665 Phil. 738, 749 (2011) [Per J. Carpio Morales, Third Division]. *See also People v. Ulat*, 674 Phil. 484, 500 (2011) [Per J. Leonardo-De Castro, First Division].

¹⁸ *People v. Navarrete*, 665 Phil. 738, 748–749 (2011) [Per J. Carpio Morales, Third Division].

Even the performance of acts which approximate compliance but do not *strictly* comply with the Section 21 has been considered insufficient. *People v. Magat*,¹⁹ for example, emphasized the inadequacy of merely marking the items supposedly seized: “Marking of the seized drugs alone by the law enforcers is not enough to comply with the clear and unequivocal procedures prescribed in Section 21 of R.A. No. 9165”.²⁰

A review of jurisprudence, even prior to the passage of the R.A. No. 9165, shows that this Court did not hesitate to strike down convictions for failure to follow the proper procedure for the custody of confiscated dangerous drugs. Prior to R.A. No. 9165, the Court applied the procedure required by Dangerous Drugs Board Regulation No. 3, Series of 1979 amending Board Regulation No. 7, Series of 1974.

In *People v. Laxa*, the policemen composing the buy-bust team failed to mark the confiscated marijuana immediately after the alleged apprehension of the appellant. One policeman even admitted that he marked the seized items only after seeing them for the first time in the police headquarters. The Court held that the deviation from the standard procedure in anti-narcotics operations produces doubts as to the origins of the marijuana and concluded that the prosecution failed to establish the identity of the *corpus delicti*.

Similarly, in *People v. Kimura*, the Narcom operatives failed to place markings on the alleged seized marijuana on the night the accused were arrested and to observe the procedure in the seizure and custody of the drug as embodied in the aforementioned Dangerous Drugs Board Regulation No. 3, Series of 1979. Consequently, we held that the prosecution failed to establish the identity of the *corpus delicti*.

In *Zaragga v. People*, involving a violation of R.A. No. 6425, the police failed to place markings on the alleged seized shabu immediately after the accused were apprehended. The buy-bust team also failed to prepare an inventory of the seized drugs which accused had to sign, as required by the same Dangerous Drugs Board Regulation No. 3, Series of 1979. The Court held that the prosecution failed to establish the identity of the prohibited drug which constitutes the *corpus delicti*.

In all the foregoing cited cases, the Court acquitted the appellants due to the failure of law enforcers to observe the procedures prescribed in Dangerous Drugs Board Regulation No. 3, Series of 1979, amending Board Regulation No. 7, Series of 1974, which are similar to the procedures under Section 21 of R.A. No. 9165. Marking of the seized drugs alone by the law enforcers is not enough to comply with the clear and unequivocal procedures prescribed in Section 21 of R.A. No. 9165.

In the present case, although PO1 Santos had written his initials on the two plastic sachets submitted to the PNP Crime Laboratory Office for examination, it was not indubitably shown by the prosecution that PO1 Santos immediately marked the seized drugs in the presence of appellant after their alleged confiscation. There is doubt as to whether the

¹⁹ 588 Phil. 395 (2008) [Per J. Tinga, Second Division].

²⁰ Id. at 405.

substances seized from appellant were the same ones subjected to laboratory examination and presented in court.

A unique characteristic of narcotic substances is that they are not readily identifiable as in fact they have to be subjected to scientific analysis to determine their composition and nature. *Congress deemed it wise to incorporate the jurisprudential safeguards in the present law in an unequivocal language to prevent any tampering, alteration or substitution, by accident or otherwise. The Court, in upholding the right of the accused to be presumed innocent, can do no less than apply the present law which prescribes a more stringent standard in handling evidence than that applied to criminal cases involving objects which are readily identifiable.*

*R.A. No. 9165 had placed upon the law enforcers the duty to establish the chain of custody of the seized drugs to ensure the integrity of the corpus delicti. Thru proper exhibit handling, storage, labeling and recording, the identity of the seized drugs is insulated from doubt from their confiscation up to their presentation in court.*²¹ (Emphasis supplied, citations omitted)

IV

The precision required in the custody of seized drugs and drug paraphernalia is affirmed by the amendments made to Section 21 by Republic Act No. 10640.

The differences between Section 21 (1) as originally stated and as amended are shown below:

Republic Act No. 9165	Republic Act No. 10640
<p>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. —</p>	<p>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. —</p>
<p>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:</p>	<p>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:</p>
<p>(1) The apprehending team having initial custody and control of the <i>drugs</i></p>	<p>(1) The apprehending team having initial custody and control of the <i>dangerous drugs, controlled precursors and essential</i></p>

²¹ Id at 403-406.

<p>shall, immediately after seizure and confiscation,</p> <p><i>physically inventory</i></p> <p>and photograph the same</p> <p>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,</p> <p><i>a representative from the media and the Department of Justice (DOJ), <u>and</u> any elected public official</i></p> <p>who shall be required to sign the copies of the inventory and be given a copy thereof;</p>	<p><i>chemicals, instruments/paraphernalia and/or laboratory equipment</i></p> <p>shall, immediately after seizure and confiscation,</p> <p><i>conduct a physical inventory of the seized items</i></p> <p>and photograph the same</p> <p>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,</p> <p><i>with an elected public official and a representative of the National Prosecution Service <u>or</u> the media</i></p> <p>who shall be required to sign the copies of the inventory and be given a copy thereof:</p> <p><i>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:</i></p> <p><i>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.</i></p>
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Section 21 (1) was simultaneously relaxed and made more specific by Republic Act No. 10640.

It was relaxed with respect to the persons required to be present during the physical inventory and photographing of the seized items. Originally under Republic Act No. 9165, the use of the conjunctive ‘and’ indicated that Section 21 required the presence of all of the following, in addition to “the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel”:

First, a representative from the media;

Second, representative from the Department of Justice (DOJ); and

Third, any elected public official.

As amended by Republic Act No. 10640, Section 21 (1) uses the disjunctive 'or' (i.e., "with an elected public official and a representative of the National Prosecution Service *or* the media"). Thus, a representative from the media and a representative from the National Prosecution Service are now alternatives to each other.

Section 21(1), as amended, now includes a specification of locations where the physical inventory and taking of photographs must be conducted (*n.b.*, it uses the mandatory "shall"). It now includes the following proviso:²²

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. (Emphasis supplied)

*Lescano v. People*²³ summarizes Section 21(1)'s requirements:

As regards the items seized and subjected to marking, Section 21(1) of the Comprehensive Dangerous Drugs Act, as amended, requires the performance of two (2) actions: physical inventory and photographing. Section 21(1) is specific as to when and where these actions must be done. As to when, it must be "immediately after seizure and confiscation." As to where, it depends on whether the seizure was supported by a search warrant. If a search warrant was served, the physical inventory and photographing must be done at the exact same place that the search warrant is served. In case of warrantless seizures, these actions must be done "at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable."

Moreover, Section 21(1) requires at least three (3) persons to be present during the physical inventory and photographing. These persons are: first, the accused or the person/s from whom the items were seized; second, an elected public official; and third, a representative of the National Prosecution Service. There are, however, alternatives to the first and the third. As to the first (i.e., the accused or the person/s from whom items were seized), there are two (2) alternatives: first, his or her representative; and second, his or her counsel. As to the representative of

²² This is not entirely novel. The Implementing Rules and Regulations of Republic Act No. 9165 already stated it. Nevertheless, even if it has been previously stated elsewhere, it now takes on a greater significance. It is no longer expressed merely in an administrative rule, but in a statute.

²³ 778 Phil. 460 (2016) [Per J. Leonen, Second Division].

the National Prosecution Service, a representative of the media may be present in his or her place.²⁴

V

Set against the strict requirements of Section 21(1) of Republic Act No. 9165,²⁵ this case screams of glaring infringements.

“the apprehending team having initial custody and control of the drugs shall, *immediately after seizure and confiscation, physically inventory and photograph the same*”

The prosecution’s witnesses gave contradicting testimonies on the place where the physical inventory was conducted. Intelligence Officer 1 Albert Orellan (Officer Orellan), the arresting officer, testified that he marked the seized items in the house of Romy Lim:

Pros. Vicente: (continuing to the witness [Officer Orellan])

Q How did you know that the one bought and the one searched were not interchanged?

A I marked the item I recovered from Romy Lim, Sir.

Q Where did you mark it Mr. Witness, in what place?

A *At their house*, Sir.²⁶ (Emphasis supplied)

Meanwhile, Intelligence Officer 1 Nestle N. Carin (Officer Carin), the poseur-buyer, and Intelligence Officer 2 Vincent Cecil Orcales (Officer Orcales), the team leader of the buy-bust operation, both testified that the inventory and marking happened in their office.

ACP VICENTE, JR.: (continuing to the witness [Officer Carin])

Q You said that Romy Lim handed the sachet of shabu to you, what happened to that sachet of shabu, Ms. Witness?

A I turned over it (sic) to IO1 Orellan during the inventory.

Q Where did he conduct the inventory?

A *At our office*.

Q Where?

A *At the PDEA Office*, sir.

²⁴ Id. at 475.

²⁵ The buy-bust operation was conducted in 2010.

²⁶ TSN dated June 2, 2011, pp. 17–18.

....

Q . . . How did you know that?

A Because I was there sir, during the inventory.

Q Then, what did he do with the sachet of shabu Ms. Witness?

A He put a marking.

Q How did you know?

A Because I was present, sir.²⁷ (Emphasis supplied)

ACP VICENTE, JR.: (To the witness [Officer Orcales])

....

Q How did Agent Orellan handle the evidence? The drugs he recovered and the buy-bust item? And what did he do with it?

A He made an inventory.

Q How about the marking?

A He made markings on it.

Q How did you know?

A I supervised them.

Q And where did Agent Orellan made the inventory?

A *In the office.*²⁸ (Emphasis supplied)

Surprisingly, Officer Carin's testimony was corroborated by Officer Orellan in his Affidavit when he narrated that they "brought the arrested suspects in [their] office and conducted inventory."²⁹

The taking of pictures was likewise not made immediately after seizure and confiscation. In their separate testimonies, Officers Orellan and Carin stated:

Pros. Vicente: (continuing to the witness [Officer Orellan])

Q What else did you do *at the office*, Mr. Witness, did you take pictures?

A We asked them of their real identity Sir the two of them, and then *we took pictures together with the evidence seized from them.*

....

Court:

²⁷ TSN dated July 22, 2011, pp. 10–12.

²⁸ TSN dated August 5, 2011, p. 13.

²⁹ RTC records (Crim. Case No. 2010-1073), p. 5, Affidavit of Arresting Officer.

These pictures IO1 Orellan were taken *at the office*?

A Yes, Your Honor.

Court:

No pictures at the house of the accused?

A None, Your Honor.³⁰ (Emphasis supplied)

ACP VICENTE, JR.: (continuing to the witness [Officer Carin])

....

Q Aside from markings what else did you do *at the office*?

A *I took pictures during the inventory.*³¹ (Emphasis supplied)

Although Officer Orcales testified that he took pictures “[i]n the house and also in the office,”³² the only pictures in the records of the case were those taken in the PDEA office.³³

During cross-examination, Officer Carin reiterated that the inventory and the taking of photographs were done in their office and not in Romy Lim’s house.³⁴

“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”

Moreover, not one of the third persons required by Section 21 (1) prior to its amendment—“a representative from the media and the Department of Justice (DOJ), *and* any elected public official”—was present during the physical inventory and taking of photographs. Instead, only accused-appellant Romy Lim and accused Eldie Gorres were present.

“who shall be required to *sign the copies of the inventory* and be given a copy thereof”

Since not one of the three required personalities were present during the operation, the inventory was not signed. Even the two accused were not given a chance to sign the shabu sachets that were allegedly found in their possession:

³⁰ TSN dated June 2, 2011, pp. 21–30.

³¹ TSN dated July 22, 2011, pp. 10–12.

³² TSN dated August 5, 2011, p. 13.

³³ RTC records (Crim. Case No. 2010-1073), p. 18, and RTC records (Crim. Case No. 2010-1074), p. 16.

³⁴ TSN dated August 5, 2011, p. 17.

Atty. Demecillo: (continuing to the witness [Officer Orellan])

Q In this Inventory, no signature of the two accused?

A The accused did not sign, Sir.

Q Not also sign[ed] by a man from the DOJ?

A Yes, Sir.

Q Also from the media?

A None, Sir.

Q Also by an elected official?

A None, Sir.³⁵

These infringements are fatal errors. The police operatives' conduct failed to dispel all reasonable doubt on the integrity of the shabu supposedly obtained from accused-appellant. The buy-bust team failed to account for the handling and safeguarding of the shabu from the moment it was purportedly taken from accused-appellant.

What is critical, however, is not the conduct of an inventory per se. Rather, it is the certainty that the items allegedly taken from the accused are the exact same items ultimately adduced as evidence before courts. *People v. Nandi*³⁶ requires the ensuring of four (4) *links* in the custody of seized items: from the accused to the apprehending officers; from the apprehending officers to investigating officers; from investigating officers to forensic chemists; and, from forensic chemists to courts. The endpoints in each link (*e.g.*, the accused and the apprehending officer in the first link, the forensic chemist and the court in the fourth link) are preordained. What is precarious is not each of these end points but the transitions or transfers of seized items from one point to another.

Section 21(1)'s requirements are designed to make the first and second links foolproof. Conducting the inventory and photographing immediately after seizure, exactly where the seizure was done (or at a location as practicably close to it) minimizes, if not eliminates, room for adulteration or the planting of evidence. The presence of the accused (or a representative) and of third-party witnesses, coupled with their attestations on the written inventory, ensures that the items delivered to the investigating officer are the items which have actually been inventoried.

The prosecution's case could have benefitted from the presence of the third-party witnesses required by Section 21(1) of the Comprehensive Dangerous Drugs Act. Indeed, the requirement that the inventory and photographing be done "immediately after the seizure and confiscation" necessarily means that the required witnesses must also be present during

³⁵ TSN dated June 2, 2011, pp. 28–29.

³⁶ 639 Phil. 134, 144 (2010) [Per J. Mendoza, Second Division].

the seizure or confiscation. *People v. Mendoza*³⁷ confirms this and characterized the presence of these witnesses as an “insulating presence [against] the evils of switching, ‘planting’ or contamination”:³⁸

The consequences of the failure of the arresting lawmen to comply with the requirements of Section 21(1) . . . were dire as far as the Prosecution was concerned. Without the insulating presence of the representative from the media or the Department of Justice, or any elected public official during the seizure and marking of the sachets of *shabu*, the evils of switching, “planting” or contamination of the evidence that had tainted the buy-busts conducted under the regime of RA No. 6425 (*Dangerous Drugs Act of 1972*) again reared their ugly heads as to negate the integrity and credibility of the seizure and confiscation of the sachets of *shabu* that were evidence herein of the corpus delicti, and thus adversely affected the trustworthiness of the incrimination of the accused. Indeed, the insulating presence of such witnesses would have preserved an unbroken chain of custody.³⁹

In blatant disregard of statutory requirements, not one of the three (3) insulating witnesses required by Section 21(1) was shown to be present during the arrest, seizure, physical inventory and taking of pictures.

The Court should not lose sight of how accused-appellant’s apprehension was supposedly occasioned by a buy-bust operation. This operation was allegedly prompted by anterior information supplied by an unidentified confidential informant.⁴⁰ Acting on the information, Regional Director Lt. Col. Edwin Layese supposedly organized a ten-person buy-bust team⁴¹ and briefed them on the operation. Thereafter, the team claims to have managed to prepare the ₱500.00 bill buy-bust money, a Coordination Form, and other documents.⁴² All these happened from the time they were informed by their confidential informant at 8:00 pm up to the time they were dispatched for the operation at around 9:45 pm.⁴³

While the team managed to secure preliminaries, it utterly failed at observing Section 21(1)’s requirements. Certainly, if the buy-bust team was so fastidious at preparatory tasks, it should have been just as diligent with observing specific statutory demands that our legal system has long considered to be critical in securing convictions. It could not have been bothered to even have one third-party witness present.

³⁷ *People v. Mendoza*, 736 Phil. 749 (2014) [Per J. Bersamin, First Division].

³⁸ *Id.* at 764.

³⁹ *Id.*

⁴⁰ *Ponencia*, p. 3.

⁴¹ *Id.*; TSN dated June 2, 2011, p. 8. In Officer Orellan’s testimony, he stated that aside from himself, the buy-bust team was composed of “Regional Director Layese, Deputy Director Atila, . . . IO1 Carin, IO2 Alfaro, IO1 Genita, IO1 Avila, IO2 Orcales, IA2 Pica, IO1 Cardona[.]”

⁴² *Id.*

⁴³ *Id.*

With the buy-bust team's almost two-hour briefing period and the preparation of the necessary documents, the prosecution appears to have been diligently prepared. How the buy-bust team can be so lax in actually carrying out its calculated operation can only raise suspicions. That diligence is the most consummate reason for not condoning the buy-bust team's inadequacies.

The prosecution likewise failed to account for the third link—from the investigating officers to the forensic chemists. Officer Orellan testified that he did not know the person who received the seized items from him in the crime laboratory.

Atty. Demecillo: (continuing to the witness [Officer Orellan])

Q Who was the person who received the drugs you delivered in the crime lab?

A I cannot exactly remember who was that officer who received that request Sir but I am sure that he is one of the personnel of the crime laboratory, Sir.

Q You know Forensic Chemist Charity Peralta Caceres?

A I only heard her name to be one of the forensic chemists in the crime lab, Sir.

Q Usually you have not seen her?

A I saw her but we were not friends, Sir.

Q But that evening of October 20, she was not the very person who received the sachet of shabu for examination?

A Only the receiving clerk, Sir.

Q Not personally Caceres?

A No, Sir.

Q After delivering these sachets of shabu, you went home?

A I went back to our office, Sir.

Q From there, you did not know anymore what happened to the sachet of shabu you delivered for examination?

A I don't know, Sir.⁴⁴

His statements were corroborated by the testimony of Officer Orcales who stated that he was with Officer Orellan when the latter gave the seized items to the crime laboratory personnel. He confirmed that the person who received it was not Chemist Caceres and that he did not know who it was.⁴⁵

This break in the chain of custody opens up the possibility of substitution, alteration, or tampering of the seized drugs during the turn over

⁴⁴ TSN dated June 2, 2011, pp. 36–37.

⁴⁵ TSN dated August 5, 2011, p. 16.

to the chemist, especially since the amount was as little as 0.02 grams. Thus, the illegal drugs tested by the chemist may not be the same items allegedly seized by the buy-bust team from accused-appellant. The doubt that the break created should have been enough to acquit accused-appellant.

VI

Section 21(1), as amended, now also includes a proviso that leaves room for noncompliance under “justifiable grounds”:

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. (Emphasis supplied)

This proviso was taken from the Implementing Rules and Regulations of Republic Act No. 9165:

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[.] (Emphasis supplied)

To sanction non-compliance, two requisites must be satisfied. First, the prosecution must identify and prove “justifiable grounds.” Second, it must show that, despite non-compliance, the integrity and evidentiary value of the seized items were properly preserved. To satisfy the second requirement, the prosecution must establish that positive steps were observed to ensure such preservation. The prosecution cannot rely on broad justifications and sweeping guarantees that the integrity and evidentiary value of seized items were preserved.

The prosecution presented the following reasons of the buy-bust team as “justifiable grounds” why they failed to have the required witnesses present during their operation: First, the operation was conducted late at night; Second, it was raining during their operation; Third, it was unsafe for the team “to wait at Lim’s house”⁴⁶; Fourth, they exerted effort to contact the barangay officials and a media representative to no avail.⁴⁷ The Ponencia added that “[t]he time constraints and the urgency of the police action understandably prevented the law enforcers from ensuring the attendance of the required witnesses, who were not improbably at a more pressing

⁴⁶ Ponencia, p. 14.

⁴⁷ Id.

engagement when their presence was requested.”⁴⁸ According to the Ponencia, “there was no genuine and sufficient attempt to comply with the law.”⁴⁹

I join Justice Diosdado Peralta in finding these explanations inadequate.

First, the testimony of team-leader Officer Orcales negates any allegation of effort that the buy-bust team made to secure the presence of a barangay official in their operation:

ATTY. DEMECILLO: (To the witness [Officer Orcales])

....

Q . . . Before going to the house of the accused, why did you not contact a barangay official to witness the operation?

A There are reasons why we do not inform a barangay official before our operation, Sir.

Q Why?

A We do not contact them because we do not trust them. They might leak our information.⁵⁰

Assuming that the buy-bust team has reason not to trust the barangay officials, they could have contacted any other elected official. The presence of barangay officials is not particularly required. What Section 21(1) requires is the presence of *any* elected official.

Second, the prosecution failed to explain why they did not contact a representative of the Department of Justice. Officer Orellan, in his Affidavit, mentioned that they only tried to coordinate with the barangay officials and the media.⁵¹ The testimonies of the prosecution’s witnesses were bereft of any statement that could show that they tried to contact a representative of the Department of Justice—one of the three required witnesses.

Third, the buy-bust team did not specifically state the kind of effort they made in trying to contact the required witnesses. A general statement that they exerted earnest effort to coordinate with them is not enough. They should narrate the steps they carried out in getting the presence of a Department of Justice representative, a media representative, and an elected official. Otherwise, it will be easy to abuse non-compliance with Section

⁴⁸ Id.

⁴⁹ Id.

⁵⁰ TSN dated August 5, 2011, pp. 14–15.

⁵¹ RTC records (Crim. Case No. 2010-1073), p. 5, Affidavit of Arresting Officer.

21(1) since a sweeping statement of “earnest effort” is enough justify non-compliance.

Fourth, the prosecution failed to state the basis why the buy-bust team felt “unsafe” in waiting for the representatives in Lim’s house. To reiterate, they were composed of at least ten members. They outnumber the two accused, who were the only persons in the house. They were able to control the accused’s movement when they ordered them “to put their hands on their heads and to squat on the floor.”⁵² Moreover, when frisked, the agents did not find any concealed weapon in the body of the two accused. How the PDEA agents could have felt “unsafe” in this situation is questionable, at the very least.

Finally, there was no urgency involved and, certainly, the team was not under any time limit in conducting the buy-bust operation and in apprehending the accused-appellant. As pointed out by Justice Alfredo Benjamin S. Caguioa in his Reflections, there could have been no urgency or time constraint considering that the supposed sale of drugs happened at Lim’s house.⁵³ The team knew exactly where the sale happens. They could have conducted their operation in another day—not late at night or when it was raining—and with the presence of the required witnesses. This could have also allowed them to conduct surveillance to confirm the information they received that accused-appellant was indeed selling illegal drugs.

As farcical as the buy-bust team’s excuses are, it would be equally farcical for us to condone it.

VII

The prosecution offers nothing more than sweeping excuses and self-serving assurances. It would have itself profit from the buy-bust team’s own inadequacies. We cannot be a party to this profligacy.

Rather than rely on the courts’ licentious tolerance and bank on favorable accommodations, our police officers should be exemplary. They should adhere to the highest standards, consistently deliver commendable results, and remain beyond reproach. Section 21’s requirements are but a bare minimum. Police officers should be more than adept at satisfying them.

At stake are some of the most sacrosanct pillars of our constitutional order and justice system: due process, the right to be presumed innocent, the threshold of proof beyond reasonable doubt and the duty of the prosecution

⁵² *Ponencia*, p. 3.

⁵³ J. Caguioa’s Reflections, p. 2.



to build its case upon its own merits. We cannot let these ideals fall by the wayside, jettisoned in favor of considerations of convenience and to facilitate piecemeal convictions for ostensible wrongdoing.

Requiring proof beyond reasonable doubt hearkens to our individual consciences. I cannot accept that the severe consequences arising from criminal conviction will be meted upon persons whose guilt could have clearly been established by police officers' mere adherence to a bare minimum. Certainly, it is not too much to ask that our *law enforcement* officers observe what the law mandates. The steps we now require outlined in the able ponencia of my esteemed colleague Justice Diosdado Peralta is definitely a step forward.

ACCORDINGLY, I vote that the Decision dated February 23, 2017 of the Court of Appeals in CA-G.R. CR HC No. 01280-MIN, be **REVERSED and SET ASIDE**. Accused-appellant Romy Lim y Miranda must be **ACQUITTED** for failure of the prosecution to prove his guilt beyond reasonable doubt.


MARVIC M.V.F. LEONEN
Associate Justice