

CERTIFIED TRUE COPY  
*Wilfredo V. Lapitan*  
WILFREDO V. LAPITAN  
Division Clerk of Court  
Third Division



APR 01 2019

Republic of the Philippines  
Supreme Court  
Manila

THIRD DIVISION

PEOPLE OF THE PHILIPPINES,  
Plaintiff-Appellee,

G.R. No. 224297  
Present:

-versus-

PERALTA, J., *Chairperson*,  
LEONEN,  
REYES, A., JR.,  
HERNANDO, and  
CARANDANG,\* JJ.

EDGARDO ROYOL y ASICO,  
Accused-Appellant.

Promulgated:  
February 13, 2019

X-----*Wilfredo V. Lapitan*-----X

DECISION

LEONEN, J.:

Complete and utter noncompliance with the chain of custody requirements of Republic Act No. 9165, or the Comprehensive Dangerous Drugs Act of 2002 (Comprehensive Dangerous Drugs Act), inescapably leads to an accused's acquittal. Conviction cannot be sustained by a mere presumption of regularity and the approximation of compliance.

This resolves an Appeal from a conviction for violation of Section 5<sup>1</sup>

\* Designated additional Member per Special Order No. 2624 dated November 28, 2018.

<sup>1</sup> Rep. Act No. 9165 (2002), sec. 5 provides:

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 penalty of imprisonment ranging from twelve (12) years and one (1) day to twenty (20) years and a fine ranging from One hundred thousand pesos (P100,000.00) to Five hundred thousand pesos (P500,000.00) 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 controlled precursor and essential chemical, or shall act as a broker in such transactions.

If the sale, trading, administration, dispensation, delivery, distribution or transportation of any

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of Republic Act No. 9165, for the illegal sale of dangerous drugs.

In an Information, accused-appellant Edgardo A. Royol (Royol), a garbage collector,<sup>2</sup> was charged with violating Section 5 of the Comprehensive Dangerous Drugs Act, as follows:

That on or about November 27, 2007 at around 10:05 o'clock in the morning, in the Municipality of Bamban, Province of Tarlac, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused did then and there willfully, unlawfully and criminally sell one half[-]sized (1/2) bricks (*sic*) of dried marijuana fruiting tops in the amount of One Thousand Pesos to poseur buyer PO2 Mark Anthony Baquiran PNP weighing 500.28 grams, a dangerous drug without being authorized by law.

Contrary to law.<sup>3</sup>

The prosecution presented two (2) witnesses: (1) the alleged poseur-buyer, then Police Officer 2 Mark Anthony Baquiran (PO2 Baquiran); and (2) the arresting officer, Police Inspector Sonny Los Baños Silva (Inspector Silva).<sup>4</sup>

According to the prosecution, at around 9:00 a.m. on November 27, 2007, a confidential informant went to the Tarlac Provincial Police Office in Camp Makabulos, Tarlac City and reported that Royol had been selling illegal drugs in Barangay Lourdes, Bamban, Tarlac. The informant allegedly told PO2 Baquiran that he was due to meet Royol that morning.<sup>5</sup>

A buy-bust team was formed with PO2 Baquiran as poseur-buyer, and Inspector Silva, Police Officer 1 Francis Capinding, and Police Officer 2 Christopher Soriano (PO2 Soriano) as arresting officers. Four (4) other members of the team were tasked as back-up. PO2 Baquiran was provided

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dangerous drug and/or controlled precursor and essential chemical transpires within one hundred (100) meters from the school, the maximum penalty shall be imposed in every case.

For drug pushers who use minors or mentally incapacitated individuals as runners, couriers and messengers, or in any other capacity directly connected to the dangerous drugs and/or controlled precursors and essential chemicals trade, the maximum penalty shall be imposed in every case.

If the victim of the offense is a minor or a mentally incapacitated individual, or should a dangerous drug and/or a controlled precursor and essential chemical involved in any offense herein provided be the proximate cause of death of a victim thereof, the maximum penalty provided for under this Section shall be imposed.

The maximum penalty provided for under this Section shall be imposed upon any person who organizes, manages or acts as a "financier" of any of the illegal activities prescribed in this Section.

The penalty of twelve (12) years and one (1) day to twenty (20) years of imprisonment and a fine ranging from One hundred thousand pesos (P100,000.00) to Five hundred thousand pesos (P500,000.00) shall be imposed upon any person, who acts as a "protector/coddler" of any violator of the provisions under this Section.

<sup>2</sup> *Rollo*, p. 6.

<sup>3</sup> *Id.* at 2-3.

<sup>4</sup> *Id.* at 3.

<sup>5</sup> *Id.* at 4 and *CA rollo*, p. 18.

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with two (2) marked ₱500.00 bills. It was also agreed that PO2 Baquiran would scratch his head to signal to the rest of the team that the sale of drugs had been consummated.<sup>6</sup>

The buy-bust team proceeded to the bridge in Barangay Lourdes, the informant's supposed meeting place with Royol. Royol arrived some 20 minutes after PO2 Baquiran positioned himself in the area. Upon meeting Royol, PO2 Baquiran showed him the two (2) marked ₱500.00 bills and told him that he intended to purchase half a kilogram of marijuana. Royol exchanged half a brick of marijuana with PO2 Baquiran's marked bills. PO2 Baquiran then scratched his head.<sup>7</sup>

Upon seeing PO2 Baquiran make the pre-arranged signal, the other members of the buy-bust team rushed to arrest Royol. Royol gave chase but was shortly apprehended by Inspector Silva and PO2 Soriano. He was then brought to the Tarlac Provincial Police Office, where the brick of marijuana was supposedly marked. PO2 Baquiran then personally brought the marijuana to the Tarlac Provincial Crime Laboratory Office, where, upon examination by Police Inspector Jebie C. Timario, it tested positive for marijuana.<sup>8</sup>

Royol testified in his defense. He recalled that in the morning of November 27, 2007, while collecting garbage, two (2) men approached him asking if he knew a certain Edgardo Saguisag (Saguisag). They left him after he said that he did not know the man. A few minutes later, the men returned with two (2) teenagers who pointed to him as Saguisag. The men then ordered him to raise his hands. He was handcuffed and made to lie face on the floor. He asked the men why they handcuffed him, but they did not reply. Instead, they searched his pockets, found ₱140.00, and took it. They then compelled him to board a red car and brought him to Makabulos. He was also shown marijuana and asked if it was his, to which he answered in the negative.<sup>9</sup>

In its five (5)-page Decision dated December 13, 2010,<sup>10</sup> the Regional Trial Court found Royol guilty as charged and rendered judgment as follows:

WHEREFORE, the prosecution having proven the guilt of the accused beyond reasonable doubt of violation of Section 5, Article II of Republic Act No. 9165, the Court hereby orders the accused to suffer the penalty of life imprisonment and to pay a fine of P500,000.00[.]

<sup>6</sup> Id. at 4-5 and CA *rollo*, p. 18.

<sup>7</sup> Id. at 5.

<sup>8</sup> Id. at 5-6.

<sup>9</sup> Id. at 6-7.

<sup>10</sup> CA *rollo*, pp. 17-21. The Decision, in Criminal Case No. 3499, was penned by Judge Alipio C. Yumul of Branch 66, Regional Trial Court, Capias, Tarlac.

SO ORDERED.<sup>11</sup>

The Court of Appeals, in its assailed May 8, 2015 Decision,<sup>12</sup> affirmed the Regional Trial Court's ruling *in toto*.

Thus, Royol filed his Notice of Appeal.<sup>13</sup>

The issue for this Court's resolution is whether or not the prosecution established accused-appellant Edgardo A. Royol's guilt beyond reasonable doubt for violating Section 5 of Republic Act No. 9165, or the Comprehensive Dangerous Drugs Act.

## I

The elements required to sustain convictions for violation of Section 5 of the Comprehensive Dangerous Drugs Act are settled. In *People v. Morales*:<sup>14</sup>

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.<sup>15</sup> (Emphasis in the original)

Concerning *corpus delicti*, Section 21 of Republic Act No. 9165, as amended by Republic Act No. 10640 in 2014, makes specific stipulations on the custody and disposition of confiscated, seized, and/or surrendered drugs and/or drug paraphernalia. Particularly, concerning custody before filing a criminal case, Section 21, as amended, provides:

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

<sup>11</sup> Id at 21.

<sup>12</sup> *Rollo*, pp. 2–18. The Decision, in CA-G.R. CR-H.C. No. 04910, was penned by Associate Justice Myra V. Garcia-Fernandez and concurred in by Associate Justices Noel G. Tijam (now a retired Associate Justice of this Court) and Victoria Isabel A. Paredes of the Special Fifth Division, Court of Appeals, Manila.

<sup>13</sup> Id. at 19–22.

<sup>14</sup> 630 Phil. 215 (2010) [Per J. Del Castillo, Second Division].

<sup>15</sup> Id. at 228 citing *People v. Darisan, et al.*, 597 Phil. 479, 485 (2009) [Per J. Corona, First Division] and *People v. Partoza*, 605 Phil. 883 (2009) [Per J. Tinga, Second Division].

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

- (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 under oath 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)

Conformably, *People v. Nandi*<sup>16</sup> specified four (4) links that must be established in a confiscated item's chain of custody:

[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.<sup>17</sup>

<sup>16</sup> 639 Phil. 134 (2010) [Per J. Mendoza, Second Division].

<sup>17</sup> Id. at 144–145 citing *People v. Zaida Kamad*, 624 Phil. 289 (2010) [Per J. Brion, Second Division].

*People v. Holgado*<sup>18</sup> explained that compliance with the chain of custody requirements protects the integrity of the confiscated, seized, and/or surrendered drugs and/or drug paraphernalia in four (4) aspects:

[F]irst, 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.<sup>19</sup>

## II

In *Morales*,<sup>20</sup> this Court categorically declared that failing to comply with Article II, Section 21(1) of Comprehensive Dangerous Drugs Act implies “a concomitant failure on the part of the prosecution to establish the identity of the *corpus delicti*[.]”<sup>21</sup> It “produce[s] doubts as to the origins of the [seized paraphernalia].”<sup>22</sup> This is in keeping with the basic standard for establishing guilt in criminal proceedings: proof beyond reasonable doubt.

While not requiring absolute certainty, proof beyond reasonable doubt demands moral certainty. Compliance with this standard is a matter of compliance with 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

<sup>18</sup> 741 Phil. 78 (2014) [Per J. Leonen, Third Division].

<sup>19</sup> Id. at 93.

<sup>20</sup> 630 Phil. 215 (2010) [Per J. Del Castillo, Second Division].

<sup>21</sup> Id. at 229 citing *People v. Orteza*, 555 Phil. 701 (2007) [Per J. Tinga, Second Division].

<sup>22</sup> *People v. Orteza*, 555 Phil. 701 (2007) [Per J. Tinga, Second Division] citing *People v. Laxa*, 414 Phil. 156, 170 (2001) [Per J. Mendoza, Second Division].

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.<sup>23</sup> (Emphasis in the original)

Since compliance with the chain of custody requirements under Section 21 ensures the integrity of the seized items, it follows that noncompliance with these requirements tarnishes the credibility of the *corpus delicti*, which is at the core of prosecutions under the Comprehensive Dangerous Drugs Act. Such noncompliance casts doubt on the very claim that an offense against the law was committed:<sup>24</sup>

Worse, the Prosecution failed to establish the identity of the prohibited drug that constituted the *corpus delicti* itself. The omission naturally raises grave doubt about any search being actually conducted and warrants the suspicion that the prohibited drugs were planted evidence.

In every criminal prosecution for possession of illegal drugs, the Prosecution must account for the custody of the incriminating evidence from the moment of seizure and confiscation until the moment it is offered in evidence. That account goes to the weight of evidence. *It is not enough that the evidence offered has probative value on the issues, for the evidence must also be sufficiently connected to and tied with the facts in issue. The evidence is not relevant merely because it is available but that it has an actual connection with the transaction involved and with the parties thereto.* This is the reason why authentication and laying a foundation for the introduction of evidence are important.<sup>25</sup> (Emphasis supplied, citations omitted)

Furthermore, noncompliance with Section 21 means that critical elements of the offense of illegal sale of dangerous drugs remain wanting. Such noncompliance justifies an accused's acquittal:

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<sup>23</sup> *Macayan, Jr. v. People*, 756 Phil. 202, 213–214 (2015) [Per J. Leonen, Second Division] citing CONST., art. III, sec. 1; CONST., art. III, sec. 14(2); *People v. Solayao*, 330 Phil. 811, 819 (1996) [Per J. Romero, Second Division]; and *Boac, et al. v. People*, 591 Phil. 508, 521–522 (2008) [Per J. Velasco, Jr., Second Division].

<sup>24</sup> *People v. Belocura*, 693 Phil. 476 (2012) [Per J. Bersamin, First Division].

<sup>25</sup> *Id.* at 495–496.

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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.*<sup>26</sup> (Emphasis supplied)

### III

*Lescano v. People*<sup>27</sup> summarized the requirements under Section 21(1):

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 the National Prosecution Service, a representative of the media may be present in his or her place.<sup>28</sup>

Here, the case against accused-appellant is woefully lacking in satisfying these requirements.

There is no semblance of compliance with Section 21(1). All the prosecution has to support its assertions on the integrity of the marijuana that was allegedly obtained from accused-appellant is its bare claim that it was marked at the Tarlac Provincial Police Office.

<sup>26</sup> *People v. Lorenzo*, 633 Phil. 393, 403 (2010) [Per J. Perez, Second Division].

<sup>27</sup> 778 Phil. 460 (2016) [Per J. Leonen, Second Division].

<sup>28</sup> *Id.* at 475.



*People v. Garcia*<sup>29</sup> is clear: the mere marking of seized items, instead of a proper physical inventory and photographing done in the presence of the persons specified under Section 21, will not justify a conviction:

Thus, other than the markings made by PO1 Garcia and the police investigator (whose identity was not disclosed), no physical inventory was ever made, and no photograph of the seized items was taken under the circumstances required by R.A. No. 9165 and its implementing rules. We observe that while there was testimony with respect to the marking of the seized items at the police station, no mention whatsoever was made on whether the marking had been done in the presence of Ruiz or his representatives. There was likewise no mention that any representative from the media and the Department of Justice, or any elected official had been present during this inventory, or that any of these people had been required to sign the copies of the inventory.<sup>30</sup> (Citations omitted)

Neither PO2 Baquiran nor Inspector Silva testified on the conduct of a proper inventory and photographing. The prosecution's claims are sorely lacking in accounting how the marijuana was actually marked, including the safety measures undertaken by police officers.

Worse, the prosecution failed to account for the presence of even just one (1) of the persons required by Section 21(1) to be present during the inventory and photographing. There was no elected public official. Neither was there a representative of the National Prosecution Service nor was there a media representative. The prosecution did not even maintain that accused-appellant himself was present.

*People v. Que*<sup>31</sup> explained the importance of third-party witnesses:

The presence of third-party witnesses is imperative, not only during the physical inventory and taking of pictures, but also during the actual seizure of items. The requirement of conducting the inventory and taking of photographs "immediately after seizure and confiscation" necessarily means that the required witnesses must also be present during the seizure or confiscation. This is confirmed in *People v. Mendoza*, where the presence of these witnesses was characterized as an "insulating presence [against] the evils of switching, 'planting' or contamination":

Similarly, P/Insp. Lim did not mention in his testimony, the relevant portions of which are quoted hereunder, that a representative from the media or the Department of Justice, or any elected public official was present during the seizure and marking of the sachets of shabu, as follows:

<sup>29</sup> 599 Phil. 416 (2009) [Per J. Brion, Second Division].

<sup>30</sup> Id. at 429.

<sup>31</sup> *People v. Que*, G.R. No. 212994, January 31, 2018, <<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2018/january2018/212994.pdf>> [Per J. Leonen, Third Division].

....

The consequences of the failure of the arresting lawmen to comply with the requirements of Section 21 (1), *supra*, 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.<sup>32</sup>

This Court is left with no objective guarantee on the integrity of the marijuana supposedly obtained from accused-appellant. The prosecution placed its faith entirely on the self-serving assurances of PO2 Baquiran and Inspector Silva. As this Court has emphasized in *Que*, this is “precisely the situation that the Comprehensive Dangerous Drugs Act seeks to prevent.”<sup>33</sup>

The very process that Section 21 requires is supposed to be a plain, standardized, even run-of-the-mill, guarantee that the integrity of the seized drugs and/or drug paraphernalia is preserved. All that law enforcers have to do is follow Section 21’s instructions. They do not even have to profoundly intellectualize their actions.<sup>34</sup>

Apart from the police officers’ glaring noncompliance with Section 21(1), the prosecution is sorely lacking in guarantees on the integrity of the marijuana from the point of marking to chemical examination. Again, the prosecution completely placed its faith on PO2 Baquiran’s recollection of how he personally brought the marijuana to the Tarlac Provincial Crime Laboratory Office.<sup>35</sup>

#### IV

Section 21(1) of the Comprehensive Dangerous Drugs Act allows for deviations from its requirements under “justifiable grounds.” The prosecution, however, never bothered to account for any such justifiable

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<sup>32</sup> *Id.* at 20–21 *citing* Rep. Act No. 9165 (2002), sec. 21(1) and *People v. Mendoza*, 736 Phil. 749 (2014) [Per J. Bersamin, First Division].

<sup>33</sup> *Id.* at 17.

<sup>34</sup> *Id.*

<sup>35</sup> *Rollo*, pp. 5–6.

ground.

In *People v. Lim*,<sup>36</sup> this Court definitively recognized the prosecution's burden to allege and substantiate justifiable grounds for deviating from the chain of custody requirements:

[J]udicial notice is taken of the fact that arrests and seizures related to illegal drugs are typically made without a warrant; hence, subject to inquest proceedings. Relative thereto, Section 1 (A.1.10) of the Chain of Custody Implementing Rules and Regulations directs:

A.1.10. Any justification or explanation in cases of noncompliance with the requirements of Section 21 (1) of R.A. No. 9165, as amended, shall be clearly stated in the sworn statements/affidavits of the apprehending/seizing officers, as well as the steps taken to preserve the integrity and evidentiary value of the seized/confiscated items. Certification or record of coordination for operating units other than the PDEA pursuant to Section 86 (a) and (b), Article IX of the IRR of R.A. No. 9165 shall be presented.

While the above-quoted provision has been the rule, it appears that it has not been practiced in most cases elevated before Us. Thus, in order to weed out early on from the courts' already congested docket any orchestrated or poorly built up drug-related cases, the following should henceforth be enforced as a mandatory policy:

1. In the sworn statements/affidavits, the apprehending/seizing officers must state their compliance with the requirements of Section 21 (1) of R.A. No. 9165, as amended, and its IRR.
2. In case of non-observance of the provision, the apprehending/seizing officers must state the justification or explanation therefor as well as the steps they have taken in order to preserve the integrity and evidentiary value of the seized/confiscated items.
3. If there is no justification or explanation expressly declared in the sworn statements or affidavits, the investigating fiscal must not immediately file the case before the court. Instead, he or she must refer the case for further preliminary investigation in order to determine the (non) existence of probable cause.
4. If the investigating fiscal filed the case despite such absence, the court may exercise its discretion to either refuse to issue a commitment order (or warrant of arrest) or dismiss the case outright for lack of probable cause in accordance with Section 5, Rule 112, Rules of Court.<sup>37</sup> (Citations omitted)

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<sup>36</sup> G.R. No. 231989, September 4, 2018, <<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2018/september2018/231989.pdf>> [Per J. Peralta, En Banc].

<sup>37</sup> Id. at 15–16.

*Lim*'s listing of requirements is consistent with *Que*, which explained that:

In order that there may be conscionable non-compliance, two (2) requisites must be satisfied: first, the prosecution must specifically allege, identify, and prove "justifiable grounds"; second, it must establish that despite non-compliance, the integrity and evidentiary value of the seized drugs and/or drug paraphernalia were properly preserved. Satisfying the second requisite demands a showing of positive steps taken to ensure such preservation. Broad justifications and sweeping guarantees will not suffice.<sup>38</sup>

It is understandably impracticable, even unreasonable, to retroactively insist here on compliance with the specific directives in *Lim*,<sup>39</sup> which merely serves to concretize Section 21(1)'s longstanding requirements. Yet, whether by *Lim*'s contemporary standard or by Section 21(1)'s bare textual articulation, the prosecution miserably failed to justify noncompliance with the chain of custody requirements under the Comprehensive Dangerous Drugs Act.

## V

In the face of the prosecution's glaring noncompliance and utter dearth of justification, the Regional Trial Court<sup>40</sup> and the Court of Appeals<sup>41</sup> maintained that accused-appellant's guilt was nonetheless established as the police officers who apprehended him benefitted from a presumption of regularity.

This is a grave error.

*Que*<sup>42</sup> explained that, in drugs cases, the prosecution cannot benefit from a presumption of regularity. Section 21 of the Comprehensive Dangerous Drugs Act articulates a specific statutory mandate that cannot be trumped by the prosecution's self-assurance.

As against the objective requirements imposed by statute, guarantees coming from the prosecution concerning the identity and

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<sup>38</sup> *People v. Que*, G.R. No. 212994, January 31, 2018, <<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2018/january2018/212994.pdf>> 22 [Per J. Leonen, Third Division].

<sup>39</sup> *People v. Lim*, G.R. No. 231989 (Notice), November 13, 2018. This Court clarified that, "[t]he mandatory policy laid down in *Lim* should not be given retroactive effect. Pertinent portion of *Lim* clearly indicates a prospective application of such policy[.]"

<sup>40</sup> *CA rollo*, p. 20.

<sup>41</sup> *Rollo*, pp. 13–14.

<sup>42</sup> *People v. Que*, G.R. No. 212994, January 31, 2018, <<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2018/january2018/212994.pdf>> [Per J. Leonen, Third Division].



integrity of seized items are naturally designed to advance the prosecution's own cause. These guarantees conveniently aim to knock two (2) targets with one (1) 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* explained that the presumption of regularity applies only when officers have shown compliance with "the standard conduct of official duty required by law." 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.

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.<sup>43</sup> (Emphasis in the original)

Jurisprudence has been definite on the consequence of noncompliance. This Court has categorically stated that noncompliance negates whatever presumption there is on the regularity of the manner by

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<sup>43</sup> Id. at 11–12 citing *People v. Kamad*, 624 Phil. 289 (2010) [Per J. Brion, Second Division].



which officers gained and maintained custody of the seized items:<sup>44</sup>

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.*<sup>45</sup> (Emphasis supplied, citations omitted)

By its very nature, Section 21 demands strict compliance. Compliance cannot give way to a facsimile; otherwise, the purpose of guarding against tampering, substitution, and planting of evidence is defeated. Proof that strict compliance is imperative is how jurisprudence disapproves of the approximation of compliance:

Even acts which approximate compliance but do not *strictly* comply with Section 21 have been considered insufficient. *People v. Magat*, for example, emphasized the inadequacy of merely marking the items supposedly seized:

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

<sup>44</sup> *People v. Navarrete*, 665 Phil. 738 (2011) [Per J. Carpio-Morales, Third Division]. See also *People v. Ulat*, 674 Phil. 484 (2011) [Per J. Leonardo-De Castro, First Division].

<sup>45</sup> *People v. Que*, G.R. No. 212994, January 31, 2018, <<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2018/january2018/212994.pdf>> 12–13 [Per J. Leonen, Third Division].

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 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.*<sup>46</sup>  
(Emphasis supplied, citations omitted)

This is but the latest in a litany of cases that demonstrate law enforcers' wanton disregard for basic statutory guidelines. While not losing sight of the urgency of addressing the drug menace, it is this Court's bounden duty to ensure compliance with laws and uphold basic freedoms. This Court has harped on and, in this Decision, continues to impress the need to comply with the bare minimum that the Comprehensive Dangerous Drugs Act requires. As in many cases before, this Court emphasizes that law enforcers' "utter disregard for Section 21 . . . raises grave doubts not only on the integrity of the allegedly seized items, but even on their own."<sup>47</sup> Self-serving assurances cannot replace reliable evidence. Failing compliance with the Comprehensive Dangerous Drugs Act, acquittal must ensue.

**WHEREFORE**, the Court of Appeals May 8, 2015 Decision in CA-G.R. CR-H.C. No. 04910 is **REVERSED** and **SET ASIDE**. Accused-appellant Edgardo Royol y Asico is **ACQUITTED** for the prosecution's failure to prove his guilt beyond reasonable doubt. He is ordered immediately **RELEASED** from detention, unless he is confined for any other lawful cause.

Let a copy of this Decision be furnished to the Director of the Bureau of Corrections for immediate implementation. The Director of the Bureau of Corrections is directed to report the action he has taken to this Court within five (5) days from receipt of this Decision. For their information, copies shall also be furnished to the Director General of the Philippine National Police and the Director General of the Philippine Drugs Enforcement Agency.

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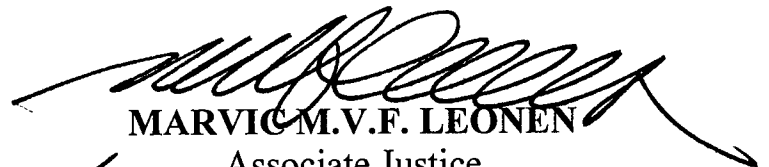
<sup>46</sup> Id. at 13-14.

<sup>47</sup> Id. at 21.

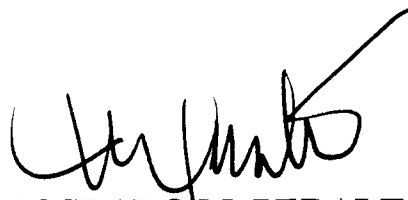



The Regional Trial Court is directed to turn over the marijuana subject of this case to the Dangerous Drugs Board for destruction in accordance with law.

**SO ORDERED.**

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

WE CONCUR:

  
**DIOSDADO M. PERALTA**  
Associate Justice  
Chairperson

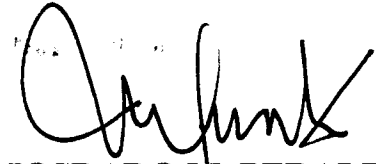
  
**ANDRES B. REYES, JR.**  
Associate Justice

  
**RAMON PAUL L. HERNANDO**  
Associate Justice

  
**ROSMAR D. CARANDANG**  
Associate Justice

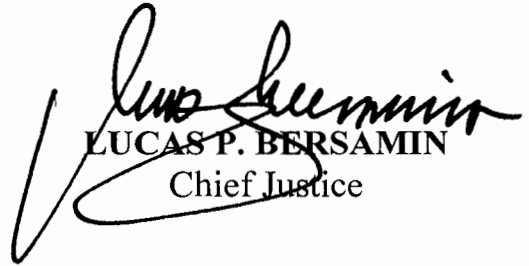
**ATTESTATION**

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.

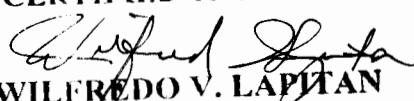
  
**DIOSDADO M. PERALTA**  
Associate Justice  
Chairperson

**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.



LUCAS P. BERSAMIN  
Chief Justice

**CERTIFIED TRUE COPY**  
  
**WILFREDO V. LAPITAN**  
Division Clerk of Court  
Third Division

**APR 01 2019**