



Republic of the Philippines
Supreme Court
 Manila

SUPREME COURT OF THE PHILIPPINES
 PUBLIC INFORMATION OFFICE
RECORDED
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SECOND DIVISION

PEOPLE OF THE PHILIPPINES,
 Plaintiff-Appellee,

G.R. No. 227184

Present:

CARPIO, J., Chairperson,
PERLAS-BERNABE,
CAGUIOA,
J. REYES, JR.,* and
HERNANDO, JJ.**

- versus -

BRYAN LABSAN y NALA and
CLENIO DANTE y PEREZ,
 Accused-Appellants.

Promulgated:

06 FEB 2019

MANCABALAN PERFECTO

x-----x

DECISION

CAGUIOA, J.:

Before the Court is an ordinary appeal¹ filed by accused-appellants Bryan Labsan y Nala (Labsan) and Clenio Dante y Perez (Dante) (collectively, accused-appellants) assailing the Decision² dated July 21, 2016 of the Court of Appeals, Twenty-Third Division, Cagayan de Oro City (CA), in CA-G.R. CR HC No. 01355-MIN, which affirmed the Judgment³ dated October 14, 2014 of the Regional Trial Court (RTC) of Cagayan de Oro City, Branch 25, in Criminal Case Nos. 2012-948, 2012-949 and 2012-950, finding accused-appellants guilty beyond reasonable doubt of the crimes punished under Sections 5 and 11, Article II of Republic Act No. (RA) 9165,⁴ otherwise known as the *Comprehensive Dangerous Drugs Act of 2002*.

The Facts

Three (3) Informations⁵ were filed against accused-appellants, two of which are for Illegal Possession of Dangerous Drugs and one for Illegal Sale

* On wellness leave.

** Designated additional Member per Special Order No. 2630 dated December 18, 2018.

¹ See Notice of Appeal dated August 2, 2016; CA *rollo*, pp. 119-121.

² CA *rollo*, pp. 88-118. Penned by Associate Justice Rafael Antonio M. Santos, with Associate Justices Edgardo T. Lloren and Ruben Reynaldo G. Roxas concurring.

³ Id. at 43-54. Penned by Presiding Judge Arthur L. Abundiente.

⁴ AN ACT INSTITUTING THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002, REPEALING REPUBLIC ACT NO. 6425, OTHERWISE KNOWN AS THE DANGEROUS DRUGS ACT OF 1972, AS AMENDED, PROVIDING FUNDS THEREFOR, AND FOR OTHER PURPOSES (2002).

⁵ Records (Crim. Case No. 2012-948), pp. 4-5; records (Crim. Case No. 2012-949), pp. 4-5; records (Crim. Case No. 2012-950), pp. 1-2.

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of Dangerous Drugs, before the RTC of Cagayan de Oro City. The Informations read as follows:

[Criminal Case No. 2012-948]

x x x x

That on September 29, 2012, at more or less one thirty in the early dawn, at Nazareth, Cagayan de Oro City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating together and mutually helping one another, without lawful authority to sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drugs, for a consideration of Two Hundred Pesos, Philippine Currency, (Php200.00), did then and there, willfully, unlawfully and criminally, sell and give away to a poseur-buyer, a white crystalline substance believed to be methamphetamine hydrochloride locally known as shabu, contained in a heat-sealed transparent cellophane sachet, which substance weighing 0.02 gram, after laboratory qualitative examination before the Philippine National Police Regional Crime Laboratory Office 10, tested positive for the presence of methamphetamine hydrochloride, a dangerous drug, with the accused knowing the substance to be dangerous drug.

Contrary to law.⁶

[Criminal Case No. 2012-949]

x x x x

That on September 29, 2012, at more or less one thirty in the early dawn, at Nazareth, Cagayan de Oro City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law to possess or use any dangerous drugs, did then and there, willfully, unlawfully and criminally have in his possession, control and custody, two (2) heat-sealed transparent plastic sachets, containing white crystalline substance believed to be dangerous drug locally known as shabu, with an aggregate weight of 0.06 gram, which substance tested positive for the presence of x x x methamphetamine hydrochloride, a dangerous drug locally known as shabu, after confirmatory test conducted by the Philippine National Police, Regional Crime Laboratory Office No. 10, Camp Evangelista, Patag, Cagayan de Oro City, with the said accused knowing the substance to be dangerous drug.

Contrary to law.⁷

[Criminal Case No. 2012-950]

x x x x

That on September 29, 2012, at more or less one thirty in the early dawn, at Nazareth, Cagayan de Oro City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law to possess or use any dangerous drugs, did then

⁶ Id. at 4.

⁷ Records (Crim. Case No. 2012-949), p. 4.



and there, willfully, unlawfully and criminally have in his possession, control and custody, one (1) heat-sealed transparent plastic sachet, containing white crystalline substance believed to be dangerous drug locally known as shabu, weighing 0.03 gram, which substance tested positive for the presence of x x x methamphetamine hydrochloride, a dangerous drug locally known as shabu, after confirmatory test conducted by the Philippine National Police, Regional Crime Laboratory Office No. 10, Camp Evangelista, Patag, Cagayan de Oro City, with the said accused knowing the substance to be dangerous drug.

Contrary to law.⁸

When arraigned, accused-appellants individually pleaded not guilty to the offenses charged against them.⁹

Thereafter, joint trial on the merits of the three (3) criminal cases ensued. The prosecution presented four (4) witnesses, namely: Police Inspector Kinthur¹⁰ Estaniel Tandog (PI Tandog), PO3 Jimmy Vicente (PO3 Vicente), PO3 Cyrus Baillo (PO3 Baillo), and SPO1 Joel Tarre (SPO1 Tarre).¹¹

The RTC dispensed with the testimony of PI Tandog after the defense admitted to the following facts but subject to the stipulation that PI Tandog does not know the source of the specimens which he examined as well as the admissibility of the evidence:

1. That PI Estaniel Tandog is an expert witness being the forensic chemist of the PNP Crime Lab stationed at Camp Evangelista, Cagayan de Oro City;
2. That he received two letters request for the laboratory examination of the specimen attached thereto as well as for the drug examination of the accused.
3. That he conducted laboratory examination as requested and reduced his finding into writing denominated as Chemistry Report No. D-202-2012 and Chemistry Report No. DTCRIM 189 & 190-2012.
4. That he brought with him the chemistry Reports and the specimen which he examined for marking and identification.¹²

The facts established by the prosecution from the testimonies of its witnesses and documentary evidence submitted before the RTC were summarized by the CA as follows:

In the early morning of 29 September 2012, while the police officers assigned at City Anti-Illegal Drugs Task Force (CAIDTF),

⁸ Records (Crim. Case No. 2012-950), p. 1.

⁹ CA rollo, p. 92.

¹⁰ Also spelled as "Kinhur" in some parts of the records.

¹¹ CA rollo, pp. 92-93.

¹² Id. at 93.



Cagayan de Oro City Police Office led by PCI Cacdac were having their tour of duty at the night cafe in Divisoria, Cagayan de Oro City, a Confidential Informant (CI) arrived and informed PCI Cacdac that a certain "Opaw" and "Bryan" were selling illicit drugs at Barangay Nazareth, Cagayan de Oro City. A short briefing was thereafter conducted by the team together with the CI for a possible buy-bust operation.

After the briefing, the team, composed of PO3 Vicente, SPO1 Tarre, PO3 Daleon, SPO1 Tagam, PO3 Baillo and PO3 Aguala, proceeded to Barangay Nazareth. PCI Cacdac, PO3 Vicente, and PO3 Aguala rode a taxi in going thereat while the rest of the team used their service motorcycle in going to the target place. The team used ordinary marked money consisting of two (2) One Hundred Peso (P100.00) bills with initials of "JPV" on it as buy-bust money.

Before the team arrived at the target area, the CI disembarked first from the taxi and approached the two (2) suspects at the side of the road. The CI and the suspects knew each other. PO3 Baillo likewise positioned himself at about 10-15 meters from where the CI transacted with the suspects. PO3 Baillo saw the actual transaction of the CI and the suspects as there was a light coming from the lamp post. He saw the CI give the ordinary marked money to "Opaw" while "Bryan" gave one (1) heat-sealed sachet plastic cellophane to the CI.

Immediately after the exchange, the CI removed his bull cap as the agreed pre-arranged signal to show that the transaction was already consummated. Hence, the buy-bust team rushed towards the suspects and the CI and introduced themselves to them and informed them of their constitutional rights. PO3 Vicente bodily searched the suspects and he recovered from "Bryan" two (2) sachets of suspected shabu. Likewise, PO3 Vicente recovered from "Opaw" one (1) sachet of suspected shabu, the two (2) P100.00 bills used as buy-bust money, and an improvised hand gun. Also, the sachet of suspected shabu subject of the buy-bust operation was turned over by the CI to PO3 Vicente. Then, the buy-bust team took pictures of the items recovered from the suspects at the area.

The suspects, who were later known as appellants Labsan and Dante, were then brought to the CAIDTF office for proper documentation. Upon their arrival thereat, PO3 Vicente turned over to SPO1 Tarre the seized items. SPO1 Tarre then marked the seized items with the following initials: "A-1, 09-29-12, 'BB' CAIDTF, BRAYAN/CLENIO", "A-2, 09-29-12, CAIDTF, BRAYAN", "A-3, 09-29-12, CAIDTF, BRAYAN", and "A-4, 09-29-12, CAIDTF, CLENIO". The markings were done in the presence of PO3 Vicente, the other members of the team, and also the accused-appellants.

Thereafter, SPO1 Tarre turned over the marked items together with the crime laboratory requests for the examination thereof to the PNP Crime Laboratory, and the living body of the two (2) appellants to PO3 Vicente and PO3 Baillo for drug testing.

The qualitative examination conducted on the specimens and urine sample taken from appellants Labsan and Dante gave positive result to the presence of methamphetamine hydrochloride or shabu.¹³

¹³ Id. at 93-95.



For the defense, Labsan and Dante were presented in court. Their testimonies are summarized as follows:

In the early dawn of 29 September 2012, appellant Labsan was sleeping in their house at Nazareth, Cagayan de Oro City when he was awakened by the barking of a dog outside. When he looked outside the house, he saw a multicab parked with appellant Dante at the driver's seat. Appellant Dante is the sweetheart of the cousin of appellant Labsan's live-in-partner. Appellant Dante was looking for his sweetheart at that time.

While appellants Labsan and Dante were conversing outside the house, a taxi stopped at the rear portion of the multicab and a person came out and approached them. Then, two (2) motor vehicles stopped in front of the multicab while another taxi stopped beside it. Armed men in civilian attire disembarked from the vehicles and poked their guns at appellant Labsan. Appellants Labsan and Dante were then handcuffed and the armed men asked appellant Labsan where his house is.

Appellant Labsan pointed to the armed men his house and he and appellant Dante were brought inside the house. The armed men opened all the bedrooms as if they were looking for something, but they found nothing. [They then asked Dante and Labsan if it is true that the two of them are selling shabu in that area which they denied outright. Appellant Labsan protested his arrest asking what offense had he committed but he was told to shut up so that he and appellant Dante will not be harmed.¹⁴] The appellants were then brought outside the house and were later boarded in the multicab. Pictures were also taken of the appellants inside the house.

Appellants Labsan and Dante were brought by the armed men to Maharlika Detention Center. On their way to Maharlika, the armed men introduced themselves as policemen. x x x¹⁵

At the Maharlika, [appellant] Labsan spotted his cellphone and he pleaded to the policemen to give him his cellphone so that he could contact his father, but they denied his plea. [Appellant] Labsan was instead put inside the detention cell in the company of other detainees, while [appellant] Dante was taken somewhere by the police. Later[,] [appellant] Labsan was taken out from the cell and brought to the office.

At the office, the policemen told [appellants] [L]absan and Dante to just admit the allegations against them, but [appellant] Labsan refuse[d] telling the police that they have not committed any wrongdoings. The policemen x x x bargained with them asking to reveal someone who is engage[d] in dealing illegal drugs, but [appellants Labsan and Dante] told the police that they do not know of anyone engaged in illegal drugs. [Appellants] Labsan and Dante were then taken to the crime laboratory, and upon their return to the Maharlika, Baillo asked [appellant] Labsan of his relationship with a former police officer, and [appellant] Labsan revealed to the police that his father is retired police officer Captain Benito Labsan.

x x x After he revealed the name of his father, Baillo discreetly revealed to him ([appellant] Labsan) that they ([appellant] Labsan and

¹⁴ Id. at 48.

¹⁵ Id. at 96.

Baillo) are “igso” (god-brothers), and that Baillo had served under his ([appellant] Labsan[’s]) father when the latter was still in active service. Baillo further told [appellant] Labsan that the latter should have revealed to him his relationship with retired officer Labsan much earlier.¹⁶

Ruling of the RTC

In its Judgment¹⁷ dated October 14, 2014, the RTC found accused-appellants guilty beyond reasonable doubt for illegal sale and illegal possession of dangerous drugs, the dispositive portion of which reads:

WHEREFORE, premises considered, this Court hereby finds that:

1. In Criminal Case No. 2012-948, accused **BRYAN LABSAN y NALA and CLENIO DANTE y PEREZ** are both **GUILTY BEYOND REASONABLE DOUBT** of the offense defined and penalized under Section 5, Article II of R.A. 9165 and each is hereby sentenced to the penalty of **LIFE IMPRISONMENT** and for each to pay a **Fine in the amount of P500,000.00** without subsidiary imprisonment in case of non-payment of Fine;
2. In Criminal Case No. 2012-949, accused **BRYAN LABSAN y NALA** is **GUILTY BEYOND REASONABLE DOUBT** of the crime defined and penalized under Section 11, Article II of R.A. 9165, and hereby sentences him to a penalty of **IMPRISONMENT ranging from twelve [12] years and one [1] day to thirteen [13] years** and to pay a **Fine in the amount of Three Hundred Thousand Pesos [P300,000.00]** without subsidiary imprisonment in case of non-payment of Fine.
3. In Criminal Case No. 2012-950, accused **CLENIO DANTE y PEREZ** is **GUILTY BEYOND REASONABLE DOUBT** of the crime defined and penalized under Section 11, Article II of R.A. 9165, and hereby sentences him to a penalty of **IMPRISONMENT ranging from twelve [12] years and one [1] day to thirteen [13] years** and to pay a **Fine in the amount of Three Hundred Thousand Pesos [P300,000.00]** without subsidiary imprisonment in case of non-payment of Fine.

X X X X

SO ORDERED.¹⁸

The RTC held that based on the unequivocal testimonies of the prosecution witnesses, it is convinced of the occurrence of the buy-bust operation, and that accused-appellants were apprehended as a consequence thereof.¹⁹ Thus, the two (2) sachets of *shabu* which were seized from Labsan and the sachet of *shabu* taken from Dante are admissible against them as they were the result of a valid search as a consequence of a valid warrantless

¹⁶ Id. at 48.

¹⁷ Id. at 43-54.

¹⁸ Id. at 53.

¹⁹ Id. at 51.

arrest.²⁰ The RTC further held that while the police officers merely paid lip service to the procedural requirements under Section 21 of RA 9165, they were able to preserve the integrity and probative value of the drugs seized from both accused-appellants.²¹

Moreover, the RTC found no merit in accused-appellants' defense of denial, which cannot overturn the relative weight and probative value of the affirmative assertions of the prosecution.²² The RTC explained that in cases involving the Dangerous Drugs Act, credence is given to the prosecution witnesses who are police officers for they are presumed to have performed their duties in regular manner, unless there is convincing evidence that they are not properly performing their duty or they were motivated by bad faith, which according to the RTC is absent in this case.²³

Ruling of the CA

On appeal, the CA, in the assailed Decision,²⁴ sustained accused-appellants' conviction. The CA agreed with the RTC that accused-appellants were legally arrested in a legitimate buy-bust operation and the items recovered from them are admissible in evidence.²⁵ The CA further held that the failure of the police officers to strictly comply with the provisions of Section 21 of RA 9165 is of no moment since the integrity and evidentiary value of the drugs seized from accused-appellants were preserved.²⁶

Hence, the instant appeal.

Issue

Whether the CA erred in sustaining accused-appellants' conviction for violation of Sections 5 and 11, Article II of RA 9165.

The Court's Ruling

The appeal is meritorious. Accused-appellants Labsan and Dante are accordingly acquitted.

In cases involving dangerous drugs, it is essential to establish with moral certainty the identity and integrity of the seized drug, for the same constitutes the very *corpus delicti* of the offense.²⁷ Thus, in order to obviate any unnecessary doubt on its identity, it is imperative for the prosecution to show that the prohibited drug confiscated or recovered from the accused is the very same substance offered in court as exhibit; and that the identity of

²⁰ Id.

²¹ Id. at 51-52.

²² Id. at 52.

²³ Id.

²⁴ Id. at 88-118.

²⁵ See id. at 98-104.

²⁶ See id. at 105-115.

²⁷ *People v. De Leon*, G.R. No. 214472, November 28, 2018, p. 6.



said drug is established with the same unwavering exactitude as that required to make a finding of guilt.²⁸

This resonates even more in buy-bust operations because by the very nature of anti-narcotics operations, the ease with which illegal drugs can be planted in hands of unsuspecting individuals and the secrecy that inevitably shrouds all drug deals, the possibility of abuse is great.²⁹ In this regard, Section 21,³⁰ Article II of RA 9165, the applicable law at the time of the commission of the alleged crimes, outlines the procedure which the police officers must strictly follow to preserve the integrity of the confiscated drugs and/or paraphernalia used as evidence. Said provision requires that: (1) the seized items must be inventoried and photographed **immediately after seizure or confiscation**; (2) the physical inventory and photographing must be done **in the presence of (a) the accused or his/her representative or counsel, (b) an elected public official, (c) a representative from the media, and (d) a representative from the Department of Justice (DOJ)**, all of whom shall be required to sign the copies of the inventory and be given a copy of the same; and (3) the seized drugs must be turned over to the Philippine National Police (PNP) Crime Laboratory within twenty-four (24) hours from confiscation for examination.³¹

In *People v. Supat*,³² the Court explained that the phrase “immediately after seizure and confiscation” means that the physical inventory and photographing of the drugs were intended by the law to be made immediately after, or at the place of apprehension. It is only when the same is not practicable that the Implementing Rules and Regulations (IRR) of RA 9165 allow the inventory and photographing to be done as soon as the buy-bust team reaches the nearest police station or the nearest office of the apprehending officer/team. This also means that the three (3) required witnesses should already be physically present at the time of apprehension — **a requirement that can easily be complied with by the buy-bust team considering that the buy-bust operation is, by its nature, a planned**

²⁸ *People v. Reyes*, G.R. No. 225736, October 15, 2018, p. 7.

²⁹ *People v. Fatallo*, G.R. No. 218805, November 7, 2018, p. 6, citing *People v. Saragena*, G.R. No. 210677, August 23, 2017, 837 SCRA 529, 543-544.

³⁰ The said Section reads as follows:

SEC. 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment.* – The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

(1) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof[.]

³¹ See RA 9165, Art. II, Sec. 21(1) and (2).

³² G.R. No. 217027, June 6, 2018.



activity.³³ In other words, a buy-bust team normally has enough time to gather and bring with them the said witnesses.³⁴

The Court, however, has clarified that under varied field conditions, strict compliance with the requirements of Section 21 of RA 9165 may not always be possible; and, the failure of the apprehending team to strictly comply with the procedure laid out in Section 21 of RA 9165 does not *ipso facto* render the seizure and custody over the items void and invalid.³⁵ However, this is with the caveat that the prosecution still needs to satisfactorily prove that: **(a) there is justifiable ground for non-compliance; and (b) the integrity and evidentiary value of the seized items are properly preserved.**³⁶

Therefore, contrary to the ruling of the courts *a quo*, it is not enough for the prosecution to merely establish a chain of custody through the testimonies of the apprehending officers. The prosecution must also provide a justifiable explanation why the police officers failed to comply with the mandatory requirements of Section 21. To be sure, the Court has repeatedly emphasized that the prosecution has the positive duty to explain the reasons behind the procedural lapses.³⁷ Without any justifiable explanation, which must be proven as a fact,³⁸ the evidence of the *corpus delicti* is unreliable, and the acquittal of the accused should follow on the ground that his guilt has not been shown beyond reasonable doubt.³⁹

The police officers failed to comply with the mandatory requirements under Section 21.

In this case, the Court finds that the police officers utterly failed to comply with the mandatory requirements of Section 21, which put into question the identity and evidentiary value of the items purportedly seized from accused-appellants.

To start with, the illegal drugs seized from accused-appellants were not marked immediately upon seizure and confiscation. Records show that three (3) plastic sachets were recovered from accused-appellants: one (1) sachet was bought by the confidential informant and two (2) sachets were confiscated by PO3 Vicente; but the markings were made not in the place of seizure and not by the police officer who recovered the seized drugs.⁴⁰ The person who marked the seized drugs, SPO1 Tarre, was not even part of the buy-bust team who conducted the operation.⁴¹

³³ Id. at 9-10.

³⁴ *People v. Casco*, G.R. No. 212819, November 28, 2018, p. 6.

³⁵ Id.

³⁶ Id.

³⁷ Id., citing *People v. Almorfe*, 631 Phil. 51, 60 (2010).

³⁸ See *People v. De Guzman*, 630 Phil. 637, 649 (2010).

³⁹ *People v. Gonzales*, 708 Phil. 121, 123 (2013).

⁴⁰ See TSN, April 30, 2013, pp. 14-15.

⁴¹ See TSN, August 20, 2013, pp. 3-4.



In *People v. De Leon*,⁴² the Court reiterated that:

x x x “Marking” means the placing **by the apprehending officer or the poseur-buyer** of his/her initials and signature on the items seized. Marking after seizure is the starting point in the custodial link; hence, **it is vital that the seized contraband be immediately marked** because succeeding handlers of the specimens will use the markings as reference. The marking of the evidence serves to separate the marked evidence from the corpus of all other similar or related evidence from the time they are seized from the accused until they are disposed of at the end of the criminal proceedings, **thus, preventing switching, planting or contamination of evidence.**

It must be noted that marking is not found in R.A. No. 9165 and is different from the inventory-taking and photography under Section 21 of the said law. Long before Congress passed R.A. No. 9165, however, **this Court had consistently held that failure of the authorities to immediately mark the seized drugs would cast reasonable doubt on the authenticity of the corpus delicti.**⁴³ (Additional emphasis and underscoring supplied)

More importantly, there was no compliance with the three (3)-witness rule. **None** of the required witnesses was present at the place of apprehension and even at the police station where the inventory and photography of the seized drugs were made. As admitted by PO3 Baillo, there was no other civilian at the police station except the accused-appellants when the inventory was made.⁴⁴ They also did not invite any barangay official of Brgy. Nazareth to witness the inventory.⁴⁵

The Court has repeatedly emphasized that the presence of the required witnesses at the time of the apprehension and inventory is mandatory, and that the law imposes the said requirement because their presence serves an essential purpose. It is essential to secure the presence of the three (3) witnesses not only during inventory but more importantly at the time or near the place of the buy-bust arrest, because it is at this point when their presence is most needed to ensure the source, identity, and integrity of the seized drug.⁴⁶ Thus, if the buy-bust operation was legitimately conducted, the presence of the insulating witnesses would controvert the usual defense of frame-up, extortion and civilian harassment. Conversely, without the presence of any of the required witnesses at the time of apprehension or during inventory, as in this case, then, doubt exists whether there was actually a buy-bust operation as there are no unbiased witnesses to prove the source, identity and integrity of the *corpus delicti*.⁴⁷

Indeed, Section 21, Article II of **RA 9165 is a matter of substantive law, and cannot be brushed aside as a simple procedural technicality; or**

⁴² Supra note 27.

⁴³ Id. at 8, citing *People v. Dahil*, 750 Phil. 212, 232 (2015).

⁴⁴ TSN, May 7, 2013, p. 14.

⁴⁵ Id.

⁴⁶ *People v. Callejo*, G.R. No. 227427, June 6, 2018, p. 13.

⁴⁷ See *People v. Casco*, supra note 34, at 7.



worse, ignored as an impediment to the conviction of illegal drug suspects.⁴⁸ For however noble the purpose or necessary the exigencies of the campaign against illegal drugs may be, it is still a governmental action that must always be executed within the boundaries of law.⁴⁹

Moreover, records do not show that the prosecution was able to establish a justifiable ground as to why the police officers were not able to secure the presence of the witnesses. In *People v. Gamboa*,⁵⁰ the Court held that the prosecution must show that earnest efforts were employed in contacting the witnesses required under the law. Considering that buy-bust is a planned operation, “police officers are x x x given sufficient time x x x to prepare x x x and consequently, make the necessary arrangements beforehand knowing full well that they would have to strictly comply with the set procedure prescribed in Section 21, Article II of RA 9165.”⁵¹ They are therefore compelled “not only to state reasons for their non-compliance, but must in fact, also convince the Court that they exerted earnest efforts to comply with the mandated procedure, and that under the given circumstance, their actions were reasonable.”⁵²

In this case, PO3 Vicente admitted that despite knowledge of the mandatory requirements of Section 21, the buy-bust team did not exert any effort to secure the presence of the required witnesses, viz.:

Q This Exhibit “E” [referring to the Inventory], this was prepared by Officer Tarre?

A Yes, Sir.

Q But the arresting officer indicated here was PO3 Vicente?

A Yes, Sir.

Q You have read this one, is that correct?

A Yes, Sir.

Q And despite having read this document you did not affix your signature in this document, is that correct?

A I forgot, Sir.

Q Your office exactly prepared this document and Inventory Receipt because this is required by law, is that correct?

A Yes, Sir.

Q **But despite knowing that this is required by law, you did not initiate or try to secure the witnesses to witness the making of**

⁴⁸ *Gamboa v. People*, 799 Phil. 584, 597 (2016), citing *People v. Umipang*, 686 Phil. 1024, 1038-1039 (2012).

⁴⁹ *Id.* at 597.

⁵⁰ G.R. No. 233702, June 20, 2018.

⁵¹ *Id.* at 9.

⁵² *Id.*

this Inventory particularly the representative from the media or the barangay official of Nazareth, is that correct?

A Yes, Sir.⁵³ (Emphasis supplied)

The Court emphasizes that while it is laudable that the drug enforcement agencies exert relentless efforts in eradicating the proliferation of prohibited drugs in the country, they must always be advised to do so within the bounds of the law.⁵⁴ Without the insulating presence of the three (3) witnesses during the seizure, marking and physical inventory of the sachets of *shabu*, the evils of switching, “planting” or contamination of the evidence again rear their ugly heads as to negate the integrity and credibility of the seized drugs that were evidence herein of the *corpus delicti*.⁵⁵ Thus, accused-appellants must perforce be acquitted.

The presumption of innocence of the accused vis-à-vis the presumption of regularity in performance of official duties.

The right of the accused to be presumed innocent until proven guilty is a constitutionally protected right.⁵⁶ The burden lies with the prosecution to prove his guilt beyond reasonable doubt by establishing each and every element of the crime charged in the information as to warrant a finding of guilt for that crime or for any other crime necessarily included therein.⁵⁷

Here, the RTC and the CA erroneously relied on the presumption of regularity in the performance of official duty because the lapses in the procedures undertaken by the buy-bust team, which the courts *a quo* even acknowledged, are affirmative proofs of irregularity.⁵⁸ In *People v. Enriquez*,⁵⁹ the Court held that “any divergence from the prescribed procedure must be justified and should not affect the integrity and evidentiary value of the confiscated contraband. Absent any of the said conditions, the **non-compliance is an irregularity**, a red flag, that casts reasonable doubt on the identity of the *corpus delicti*.”⁶⁰

The presumption of regularity in the performance of duty cannot overcome the stronger presumption of innocence in favor of the accused.⁶¹ Otherwise, a mere rule of evidence will defeat the constitutionally enshrined

⁵³ TSN, April 30, 2013, pp. 15-16.

⁵⁴ See *People v. Ramos*, 791 Phil. 162, 175 (2016).

⁵⁵ See *People v. Tomawis*, G.R. No. 228890, April 18, 2018, p. 11, citing *People v. Mendoza*, 736 Phil. 749, 764 (2014).

⁵⁶ 1987 CONSTITUTION, Art. III, Sec. 14(2). “In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved x x x.”

⁵⁷ *People v. Belocura*, 693 Phil. 476, 503-504 (2012).

⁵⁸ See *People v. Mendoza*, supra note 55, at 770.

⁵⁹ 718 Phil. 352 (2013).

⁶⁰ Id. at 366. Emphasis supplied.

⁶¹ *People v. Mendoza*, supra note 55, at 770.



right to be presumed innocent.⁶² The Court has consistently directed the trial courts to apply this differentiation.⁶³

In this case, the presumption of regularity does not even arise because of the buy-bust team's blatant disregard of the established procedures under Section 21 of RA 9165. What further militates against according the police officers in this case the presumption of regularity is the fact that the 2010 PNP Manual on Anti-Illegal Drugs Operation and Investigation⁶⁴ (2010 AIDSOTF Manual), which mandates strict compliance with Section 21, was also disregarded. The 2010 AIDSOTF Manual echoes the requirement of marking at the place of seizure, photography of the seized items upon discovery, the presence of the required witnesses during inventory and the justifiable explanation for non-observance, to wit:

Section 13. Handling, Custody and Disposition of Drug Evidence

a. In the handling, custody and disposition of the evidence, the provision of Section 21, RA 9165 and its IRR shall be strictly observed.

b. Photographs of the pieces of evidence must be taken upon discovery without moving or altering its position in the place where it is situated, kept or hidden, including the process of recording the inventory and the weighing of dangerous drugs, and if possible under existing conditions, with the registered weight of the evidence on the scale focused by the camera, in the presence of persons required, as provided under Section 21, Art II, RA 9165.

c. The seizing officer must mark the evidence with his initials indicating therein the date, time and place where the evidence was found and seized. The seizing officer shall secure and preserve the evidence in a suitable evidence bag or in an appropriate container for further laboratory examinations.

x x x x

A - Drug Evidence

a. Upon seizure or confiscation of the dangerous drugs or controlled precursors and/or essential chemicals (CPECs), laboratory equipment, apparatus and paraphernalia, the operating unit's seizing officer/inventory officer must conduct the physical inventory, markings and photograph the same in the place of operation in the presence of:

- a. The suspect/s or the person/s from whom such items were confiscated and/or seized or his/her representative or counsel.
- b. A representative from the media.
- c. A representative from the Department of Justice; and
- d. Any elected public official who shall affix their signatures and who shall be given copies of the inventory.

x x x x

⁶² See *People v. Catalan*, 699 Phil. 603, 621 (2012).

⁶³ *People v. Callejo*, supra note 46, at 20.

⁶⁴ Pursuant to National Police Commission Resolution No. 2010-094, February 26, 2010.



d. If the said procedures in the inventory, markings and taking of photographs of the seized items were not observed, (Section 21, RA 9165), the law enforcers must present an explanation to justify non-observance of prescribed procedures and “must prove that the integrity and evidentiary value of the seized items are not tainted.”⁶⁵

All told, the prosecution failed to prove the *corpus delicti* of the offenses of sale and possession of illegal drugs due to the multiple unexplained breaches of procedure committed by the buy-bust team in the seizure, custody, and handling of the seized drugs. In other words, the prosecution was not able to overcome the presumption of innocence of accused-appellants.

The buy-bust operation was merely fabricated.

The Court also cannot agree with the finding of both the RTC and the CA that a legitimate buy-bust operation was conducted in this case. A buy-bust operation is a form of entrapment in which the violator is caught *in flagrante delicto* and the police officers conducting the operation are not only authorized but duty-bound to apprehend the violator and to search him for anything that may have been part of or used in the commission of the crime.⁶⁶ However, where there really was no buy-bust operation conducted, the elements of illegal sale of prohibited drugs cannot be proved and the indictment against the accused will have no leg to stand on.⁶⁷

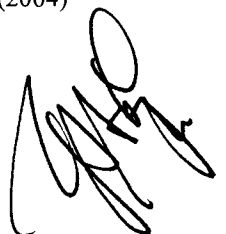
This is the situation in this case.

What puts in doubt the conduct of the buy-bust operation is the police officers’ **deliberate disregard** of the requirements of the law, which leads the Court to believe that the buy-bust against accused-appellants was a mere pretense, a sham. It bears to reiterate that none of the required witnesses was present at the time the alleged drugs were seized from accused-appellants; hence, there was no unbiased witness to prove the veracity of the events that transpired on the day of the incident or whether a legitimate buy-bust operation actually took place. Moreover, the police officers unjustifiably failed to mark the seized drugs at the place of arrest and to inventory and photograph the same in the presence of the witnesses which, again, are required under the law to prevent planting, switching and contamination of evidence. These circumstances lend credence to accused-appellants’ claim that they were arrested by armed men and brought in a detention center without any clue on what offense they have committed; that they were told by the police officers to admit to selling *shabu* or reveal someone who was engaged in dealing illegal drugs; and when they denied selling *shabu* and told the police officers that they did not know anyone engaged in illegal drugs,

⁶⁵ 2010 AIDSOTF Manual, Rule II, Sec. 13.

⁶⁶ *People v. Mateo*, 582 Phil. 390, 410 (2008), citing *People v. Ong*, 476 Phil. 553, 571 (2004) and *People v. Juatan*, 329 Phil. 331, 337-338 (1996).

⁶⁷ *People v. De la Cruz*, 666 Phil. 593, 605 (2011).



they were then brought to the crime laboratory for examination; and charges for illegal sale and possession of dangerous drugs were filed against them.⁶⁸

Indeed, the Court is not unaware that, in some instances, law enforcers resort to the practice of planting evidence to extract information or even to harass civilians.⁶⁹ This is despicable. Thus, the Court reminds the trial courts to exercise extra vigilance in trying drug cases; and directs the PNP to conduct an investigation on this incident and other similar cases, lest an innocent person is made to suffer the unusually severe penalties for drug offenses.

As a final note, the Court exhorts the prosecutors to diligently discharge their onus to prove compliance with the provisions of Section 21 of RA 9165, as amended, and its IRR, which is fundamental in preserving the integrity and evidentiary value of the *corpus delicti*. **To the mind of the Court, the procedure outlined in Section 21 is straightforward and easy to comply with.** In the presentation of evidence to prove compliance therewith, the prosecutors are enjoined to recognize any deviation from the prescribed procedure and provide the explanation therefor as dictated by available evidence. Compliance with Section 21 being integral to every conviction, the appellate court, this Court included, is at liberty to review the records of the case to satisfy itself that the required proof has been adduced by the prosecution whether the accused has raised, before the trial or appellate court, any issue of non-compliance. If deviations are observed and no justifiable reasons are provided, the conviction must be overturned, and the innocence of the accused affirmed.⁷⁰

WHEREFORE, in view of the foregoing, the appeal is hereby **GRANTED**. The Decision dated July 21, 2016 of the Court of Appeals, Twenty-Third Division, Cagayan de Oro City in CA-G.R. CR HC No. 01355-MIN is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellants BRYAN LABSAN y NALA and CLENIO DANTE y PEREZ are **ACQUITTED** of the crimes charged on the ground of reasonable doubt, and are **ORDERED IMMEDIATELY RELEASED** from detention unless they are being lawfully held for another cause. Let an entry of final judgment be issued immediately.

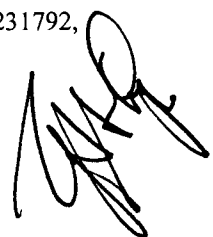
Let a copy of this Decision be sent to the Superintendent of the Davao Prison and Penal Farm, for immediate implementation. The said Superintendent is **ORDERED** to **REPORT** to this Court within five (5) days from receipt of this Decision the action he has taken. A copy shall also be furnished to the Director General of the Philippine National Police for his information.

Further, the National Police Commission is hereby **DIRECTED** to **CONDUCT AN INVESTIGATION** on the police officers involved in the buy-bust operation conducted in this case.

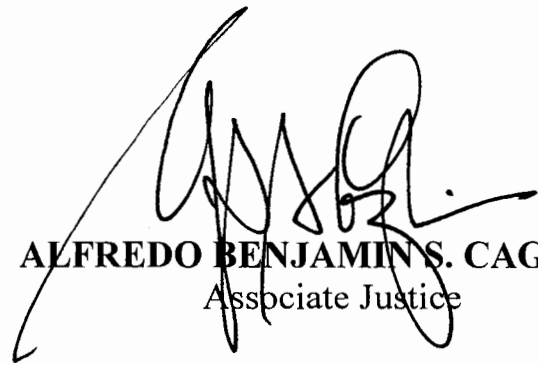
⁶⁸ See CA rollo, pp. 85-87.

⁶⁹ *People v. Daria, Jr.*, 615 Phil. 744, 767 (2009).

⁷⁰ *People v. Otico*, G.R. No. 231133, June 6, 2018, p. 23, citing *People v. Jugo*, G.R. No. 231792, January 29, 2018, p. 10.




SO ORDERED.

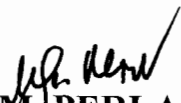


ALFREDO BENJAMINS S. CAGUIOA
Associate Justice

WE CONCUR:




ANTONIO T. CARPIO
Associate Justice
Chairperson



ESTELA M. PERLAS-BERNABE
Associate Justice

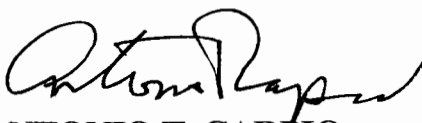
(On wellness leave)
JOSE C. REYES, JR.
Associate Justice



RAMON PAUL L. HERNANDO
Associate Justice

ATTESTATION

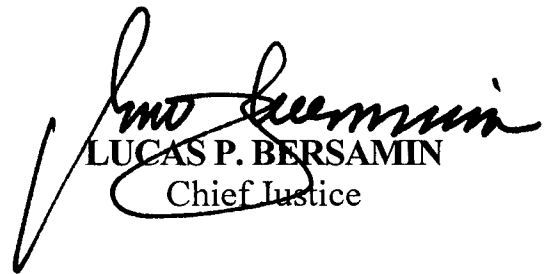
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



ANTONIO T. CARPIO
Associate Justice
Chairperson, Second Division

CERTIFICATION

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


LUCAS P. BERSAMIN
Chief Justice

