



Republic of the Philippines
Supreme Court
 Manila

SUPREME COURT OF THE PHILIPPINES
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THIRD DIVISION

PEOPLE OF THE PHILIPPINES,
 Plaintiff-Appellee,

G.R. No. 233800

Present:

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

- versus -

Promulgated:

MINDA PANTALLANO,
 Accused-Appellant.

March 6, 2019

[Signature]

X-----X

DECISION

REYES, A., JR., J.:

On appeal¹ is the Decision² dated April 24, 2017 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 01420-MIN which affirmed accused-appellant Minda Pantallano's (Pantallano) conviction for violation of Sections 5 and 11, Article II of Republic Act (R.A.) No. 9165, otherwise known as the *Comprehensive Dangerous Drugs Act of 2002*. In a Decision³ promulgated on March 27, 2015, the Regional Trial Court (RTC) of Iligan City, Branch 6, found Pantallano guilty beyond reasonable doubt of Illegal Possession and Illegal Sale of Dangerous Drugs and meted on her the penalty of life imprisonment and a fine of ₱300,000.00 and ₱500,000.00, respectively.

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

¹ CA *rollo*, pp. 22-23.

² Penned by Associate Justice Perpetua T. Atal-Pano, with Associate Justices Romulo V. Borja and Ronaldo B. Martin, concurring; id. at 104-124.

³ Rendered by Judge Leonor S. Quiñones; id. at 49-61.

Reyes

The Facts

In two separate Informations⁴ dated March 2, 2012, Pantallano was charged with violation of Sections 5 and 11, Article II of R.A. No. 9165. The accusatory portions in the Informations read:

CRIM CASE NO. 06-15918

That on or about March 1, 2012, in the City of Iligan, Philippines, and within the jurisdiction of this Honorable Court, the said accused, without authority of law, did then and there willfully, unlawfully, and feloniously have in his (sic) possession, custody and control, four (4) small heat-sealed transparent plastic sachets each containing white crystalline substance commonly known as shabu, a dangerous drug, with a total weight of 0.350 gram, more or less.

Contrary to and in violation of Section 11 of Republic Act No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

CRIM. CASE NO. 06-15919

That on or about March 1, 2012, in the City of Iligan, Philippines, and within the jurisdiction of this Honorable Court, the said accused, without authority of law, did then and there willfully, unlawfully, and feloniously sell and deliver for the amount of P300.00 one (1) small heat-sealed transparent plastic sachet containing 0.03 gram of white crystalline substance commonly known as Shabu, a dangerous drug.

Contrary to law.⁵

On April 26, 2012, Pantallano was arraigned in both cases. The two Informations were separately read in Cebuano-Visayan dialect which is known to and spoken by her. She entered a plea of "Not Guilty" in both cases.⁶

Version of the Prosecution

The prosecution presented five witnesses, namely: Police Senior Inspector Mary Leocy Mag-abo (PSI Mag-abo), a Forensic Chemical Officer; Kagawad Evangeline Ebale (Kagawad Ebale) and Philippine Drug Enforcement Agency (PDEA) agents: Intelligence Officer 1 Remedios Patino (IO1 Patino), IO1 Rubylyn Alfaro (IO1 Alfaro), and IO1 Samuel Salang (IO1 Salang).

⁴ Id. at 49-50.

⁵ Id.

⁶ Id. at 50.



On March 1, 2012, a confidential agent reported to the PDEA Office, Tipanoy, Iligan City, that a certain Minda, who was later on identified as Pantallano, was engaged in the selling of methamphetamine hydrochloride. The PDEA Regional Director authorized the creation of a team to conduct a buy-bust operation. Said team included IO1 Patino, IO1 Salang and IO3 Alfaro, the team leader. IO1 Patino was designated as the poseur-buyer, while IO1 Salang was designated as the arresting officer. The rest of the team was tasked with securing the perimeter of the target area. During the briefing, the confidential informant provided information on the location and general layout of Pantallano's house as well as her physical appearance.⁷

At around 11:00 a.m., the team and their confidential informant proceeded to Barangay Saray, Iligan City. They parked at a distance from Pantallano's house (along Canaway Road near Iglesia ni Cristo Church). From there, IO1 Patino and the confidential informant took a pedicab and disembarked at Purok 5. Meanwhile, the rest of the team positioned themselves at more or less 50 meters away from Pantallano's house.⁸

Once they reached the house, the confidential informant called out to Pantallano. When Pantallano appeared, the informant asked her, "*Puede ba magtanong? Naa ba diha?*" (Can I ask? Do you have something?) Pantallano replied, "*Naa.*" (There is.) The confidential informant indicated that his friend, IO1 Patino, wanted to purchase. Pantallano invited them inside and asked IO1 Patino how much she would like to purchase. IO1 Patino said she wished to buy ₱300.00 worth. IO1 Patino then handed over the buy-bust money of three 100-peso bills to Pantallano. Upon receiving the money, Pantallano went to an area of the house enclosed by a curtain. When she lifted the curtain, IO1 Patino saw a table from which Pantallano took something. When Pantallano returned, she handed one (1) sachet to IO1 Patino. The sachet contained white crystalline substance which IO1 Patino suspected to be *shabu*. IO1 Patino then discreetly rang Salang's phone to signal him that the sale of *shabu* has been consummated. IO1 Patino left the premises with the confidential informant in order to secure him in the service vehicle.⁹

IO1 Salang and the rest of the team rushed towards Pantallano's house to meet IO1 Patino and the confidential informant. When they reached the house, they announced that they are PDEA agents. IO1 Salang then informed Pantallano of her violation, as well as her constitutional rights, and arrested her. IO1 Alfaro searched the person of Pantallano but found nothing.¹⁰

⁷ Id. at 51.

⁸ Id.

⁹ Id.

¹⁰ Id. at 57.



Prior to the buy-bust operation, the confidential informant told the team that behind the curtain in Pantallano's house, there is a small make-shift room with a table. When IO1 Salang lifted the curtain during the buy-bust operation, the team then saw on top of the table four sachets of *shabu* and the buy-bust money. IO1 Salang marked the four sachets of *shabu* with "SS-1," "SS-2," "SS-3," and "SS-4," each with the date "3/01/12." IO1 Alfaro then called for the barangay official of Saray, media men and police officers from Precinct 5, Iligan City.¹¹

The team commenced with the inventory of the seized items upon the arrival of Kagawad Ebale, as well as several police officers from the precinct. IO1 Patino marked the sachet she purchased from Pantallano with "BB-RPP 3/01/12" and prepared the corresponding Certificate of Inventory. IO1 Salang also prepared the inventory of the sachets of *shabu* and the buy-bust money that was recovered inside Pantallano's house. IO1 Salang took photographs of IO1 Patino, while the latter prepared her inventory, and IO1 Patino did the same for IO1 Salang when it was his turn to prepare the inventory. Kagawad Ebale, thereafter, signed both inventories after they were completed.¹²

The team then proceeded to Police Station 5 to record the buy-bust operation in the police blotter. Thereafter, they went to the PDEA satellite office in Tipanoy, Iligan City, where IO1 Patino prepared two separate letter requests for laboratory examination of the purchased and seized sachets of *shabu*. IO1 Patino then personally delivered the sachet of *shabu* she purchased along with the corresponding letter-request to the Philippine National Police (PNP) Crime Laboratory in Camp Tomas Cabili, Iligan City.¹³

IO1 Salang, likewise, personally delivered the four sachets of *shabu* that he recovered from Pantallano's house with the corresponding letter-request, to the same PNP Crime Laboratory.

PSI Mag-abo, Forensic Chemical Officer and the Chief of Lanao Del Norte and Iligan City Crime Laboratory Office, testified that their office received requests for laboratory examination on the evidence obtained from the buy-bust operation and that recovered by the PDEA; that she herself conducted the laboratory examination of all five sachets submitted by IO1 Patino and IO1 Salang; and that the laboratory examination showed that all five sachets were positive for the presence of methamphetamine hydrochloride, otherwise known as *shabu*. Her positive findings are encapsulated in Chemistry Report No. D-19-2012 and Chemistry Report No. D-20-2012.¹⁴

¹¹ Id. at 53.

¹² Id. at 55.

¹³ Id. at 58.

¹⁴ Id. at 55-56.

Keyser

Version of the Defense

The defense presented two witnesses, Pantallano herself and her daughter Ria Pantallano (Ria).

Ria testified that at 11:00 a.m. of March 1, 2012, while she was attending to her younger brother and her mother was attending to her younger sister, a woman entered their house. This woman was later identified as IO1 Alfaro. Ria testified that IO1 Alfaro, who at that time was holding a firearm, immediately took hold of her mother's arm and handcuffed the latter.¹⁵

IO1 Alfaro then asked her mother if she is "Berondo." Her mother was not able to answer due to shock. Ria likewise testified that she was only 16 years old when it happened, her younger sister was 4 years old and her youngest brother was 2 years old.¹⁶

Immediately thereafter, a thin woman and five men, whom she later identified as PDEA agents, entered the house. They conducted a search, and IO1 Alfaro led Pantallano to a table inside the house. The PDEA woman got a white plastic sachet from her pocket and then poured its contents on the table, which appeared to be small transparent plastic cellophanes containing crystalline substance.¹⁷

The PDEA woman specifically ordered Ria not to observe what they were doing, and ordered her to go upstairs. Ria held on to her two other siblings and went upstairs, but opted to stay and be seated in the middle part of the staircase, where a PDEA armed agent guarded them.¹⁸

Ria saw the PDEA woman named IO1 Patino taking photographs, while one PDEA agent was writing on a paper. The witness also saw Kagawad Ebale enter their house and saw him writing on a paper and the PDEA agents also taking photographs of him.¹⁹

Ria also testified that she knows a certain "Berondo" who happens to be their lady neighbor, and is living at the back of their house.²⁰

¹⁵ Id. at 34.

¹⁶ Id.

¹⁷ Id. at 35.

¹⁸ Id.

¹⁹ Id. at 37.

²⁰ Id.

Mejia

Pantallano, the last witness for the defense, denied the accusations hurled against her for Violation of Sections 5 and 11 of R.A. No. 9165. She testified that on March 1, 2012 at around 11:00 a.m., she was with her children Ria, Rizel, and Rex in their house. Her husband was working at that time. According to her, IO1 Alfaro immediately entered their house and held her left forearm, asking if she was a certain “Berondo.” A thin woman thereafter entered followed by five PDEA agents who searched the house and found nothing.²¹

After the PDEA agents searched the person of Pantallano and found nothing, IO1 Alfaro brought Pantallano near a table in her house and then the thin woman pulled out a plastic cellophane in her pocket and poured the contents on top of the table. Inside the plastic were small plastic transparent cellophane containing white crystalline substance which looked like “*tawas*.” Pantallano was then asked by the thin woman if she is Bebing Berondo. She shook her head. According to Pantallano, Bebing Berondo is her neighbor.²²

The PDEA prepared the necessary documents and, likewise, placed the small transparent plastics containing “*tawas*” on the table. Kagawad Ebale arrived in the house and saw Pantallano sign the papers which she claims not to have read. Pantallano sought help from Kagawad Ebale and the latter told her there was no problem.²³

According to Pantallano, the PDEA did not even make her sign the documents nor was she given a copy; that it was only Kagawad Ebale who signed the documents in her house. After the preparation of the papers, the PDEA took photographs and then Pantallano was brought outside her house and escorted towards the PDEA vehicle. When they arrived at the police precinct, she was again photographed.

In a Decision²⁴ dated March 12, 2015, the RTC found Pantallano guilty of the crime charged. The dispositive part of the RTC decision reads:

WHEREFORE, premises considered, the Court hereby pronounces the accused GUILTY beyond reasonable doubt for violation of the provisions of Sec. 11, Article II of R.A. 9165 (possession) in Criminal Case No. 06-15918 and imposes upon her the penalty of imprisonment ranging from twelve (12) years and one (1) day to twenty (20) years and a fine of ₱300,000.00, as provided under Section 11, Article II, paragraph 3 of R.A. 9165, without subsidiary imprisonment in case of insolvency.

²¹ Id. at 50.

²² Id. at 43.

²³ Id. at 57.

²⁴ Id. at 49-61.



The four sachets of shabu marked as Exhibit I x x x and the eight (8) pieces of empty large rectangular-shaped plastic sachets marked as Exhibit J are hereby ordered forfeited in favor of the government.

Moreover, the Court finds the accused GUILTY beyond reasonable doubt for violation of the provisions of [Section] 5, Art. II of R.A. 9165 (sale) in **Criminal Case No. 06-15919** and imposes upon her the penalty of life imprisonment and a fine of ₱500,000.00, as provided under Section 5, Article II, paragraph 1 of R.A. 9165, without subsidiary imprisonment in case of insolvency.

The sachet of shabu weighing 0.03 gram [marked as Exhibit I], subject of the buy-bust is hereby forfeited in favor of the government.

The preventive imprisonment of the accused shall be credited in full in the service of her sentence.

SO ORDERED.²⁵

Pantallano moved for reconsideration,²⁶ but the same was denied by the trial court in a Resolution²⁷ dated May 4, 2015. The trial court, however, sought it proper to rectify the penalty earlier imposed. The amended penalty reads as follows:

WHEREFORE, premises considered, the motion for reconsideration is hereby **DENIED**.

However, as the Court inadvertently failed to apply the indeterminate sentence law in imposing the penalty in Criminal Case No. 06-15918, the March 12, 2015 Decision is hereby amended rectifying the penalty imposed in Criminal Case No. 06-15918 to read as follows:

Criminal Case No. 06-15918
For : Violation of Sec. 11, Art. II of R.A. 9165 (possession)

The accused GUILTY beyond reasonable doubt for violation of the provisions of Sec. 11, Art. II of R.A. 9165 and imposes upon her the penalty of imprisonment ranging from *twelve (12) years and one (1) day to fourteen (14) years* and a fine of ₱300,000.00, as provided under Section 11, Article II, paragraph 3 of R.A. 9165, without subsidiary imprisonment in case of insolvency.

The four sachets of shabu marked as Exhibit I [Nb: with a total weight of 0.350 gram] and the eight (8) pieces empty large rectangular shaped plastic sachets marked as Exhibit J are hereby ordered forfeited in favor of the government.

SO ORDERED.²⁸

²⁵ Id. at 61.

²⁶ Id. at 62-72.

²⁷ Id. at 73-77.

²⁸ Id. at 76-77.



On appeal, the appellate court affirmed the RTC decision. According to the CA, the elements of illegal sale and possession of dangerous drugs have been sufficiently established by the prosecution. It, likewise, opined that the integrity and evidentiary value of the seized drugs were preserved as shown by the categorical narration of IO1 Salang and IO1 Patino. The dispositive portion of the CA Decision²⁹ dated April 24, 2017 reads:

WHEREFORE, the appeal is hereby DENIED. The Decision dated March 12, 2015 of the [RTC], Branch 06, Iligan City, in Criminal Case Nos. 06-15918 and 06-15919 is AFFIRMED.

SO ORDERED.³⁰

Hence, the present appeal.

The Issue

Whether or not the CA committed a reversible error in affirming Pantallano's conviction for violation of Sections 5 and 11 of R.A. No. 9165 notwithstanding the following:

- I. Conviction of Pantallano on mere presumption of regularity in the performance of official duties of the arresting officers is improper in the case at bar;
- II. The strict procedure under Section 21 of R.A. No. 9165 was not complied with;
- III. The admission in evidence of the sachets of alleged *shabu* was in violation of appellant's right against unreasonable searches and seizures;
- IV. The *corpus delicti* was not established with moral certainty.

Ruling of the Court

The appeal is meritorious.

To convict an accused who is charged with illegal possession of dangerous drugs, defined and penalized under Section 11, Article II of R.A. No. 9165, the prosecution must establish the following elements by proof beyond reasonable doubt: (a) that the accused was in possession of dangerous drugs; (b) such possession was not authorized by law; and (c) the accused was freely and consciously aware of being in possession of dangerous drugs.³¹

²⁹ Id. at 104-124.

³⁰ Id. at 123.

³¹ *People v. Ismael*, 806 Phil. 21, 38 (2017); *Reyes v. Court of Appeals*, 686 Phil. 137, 148 (2012), citing *People v. Sembrano*, 642 Phil. 476, 490-491 (2010).

Meyer

On the other hand, in order to secure a conviction for illegal sale of dangerous drugs, defined and penalized under Section 5, Article II of R.A. No. 9165, the prosecution must establish the following elements: (1) the identity of the buyer and the seller, the object of the sale and its consideration; and (2) the delivery of the thing sold and the payment therefor. What is important is that the sale transaction of drugs actually took place and that the object of the transaction is properly presented as evidence in court and is shown to be the same drugs seized from the accused.³²

The prosecution must prove with moral certainty the identity of the prohibited drug, considering that the dangerous drug itself forms part of the *corpus delicti* of the crime. The prosecution has to show an unbroken chain of custody over the dangerous drugs so as to obviate any unnecessary doubts on the identity of the dangerous drugs on account of switching, “planting,” or contamination of evidence. Accordingly, the prosecution must be able to account for each link in the chain of custody from the moment that the illegal drugs are seized up to their presentation in court as evidence of the crime.³³

In this case, Pantallano was charged with the crime of Illegal Sale and Illegal Possession of Dangerous Drugs, defined and penalized under Sections 5 and 11,³⁴ Article II of R.A. No. 9165. Pantallano insists that she should be acquitted for failure of the prosecution to establish every link in the chain of custody of the seized dangerous drugs and its failure to comply with the procedure outlined in Section 21 of R.A. No. 9165.

In *People v. Relato*,³⁵ the Court explained that in a prosecution for sale and possession of methamphetamine hydrochloride (*shabu*) prohibited under R.A. No. 9165, the State not only carries the heavy burden of proving the elements of the offense but also bears the obligation to prove the *corpus*

³² *People v. Ismael*, supra, at 29.

³³ *People of the Philippines v. Ronaldo Paz y Dionisio*, G.R. No. 229512, January 31, 2018, citing *People v. Viterbo*, 739 Phil. 593, 601 (2014); *People v. Alivio, et al.*, 664 Phil. 565, 580 (2011); *People v. Denoman*, 612 Phil. 1165, 1175 (2009).

³⁴ **Section 11. Possession of Dangerous Drugs.** - 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 possess any dangerous drug in the following quantities, regardless of the degree of purity thereof:

x x x

Otherwise, if the quantity involved is less than the foregoing quantities, the penalties shall be graduated as follows:

x x x

(3) Imprisonment of twelve (12) years and one (1) day to twenty (20) years and a fine ranging from Three hundred thousand pesos (P300,000.00) to Four hundred thousand pesos (P400,000.00), if the quantities of dangerous drugs are less than five (5) grams of opium, morphine, heroin, cocaine or cocaine hydrochloride, marijuana resin or marijuana resin oil, methamphetamine hydrochloride or “*shabu*,” or other dangerous drugs such as, but not limited to, MDMA or “ecstasy,” PMA, TMA, LSD, GHB, and those similarly designed or newly introduced drugs and their derivatives, without having any therapeutic value or if the quantity possessed is far beyond therapeutic requirements; or less than three hundred (300) grams of *marijuana*.

³⁵ 679 Phil. 268 (2012).

Mejia

delicti, failing in which the State will not discharge its basic duty of proving the guilt of the accused beyond reasonable doubt. **It is settled that the State does not establish the *corpus delicti* when the prohibited substance subject of the prosecution is missing or when substantial gaps in the chain of custody of the prohibited substance raise grave doubts about the authenticity of the prohibited substance presented as evidence in court.** Any gap renders the case for the State less than complete in terms of proving the guilt of the accused beyond reasonable doubt.³⁶

Section 21, Article II of R.A. No. 9165 laid down the procedure that must be observed and followed by police officers in the seizure and custody of dangerous drugs. Paragraph 1 not only provides the manner by which the seized drugs must be handled but likewise enumerates the persons who are required to be present during the inventory and taking of photographs, *viz.*:

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. (Emphasis and underscoring Ours)

In 2014, R.A. No. 10640³⁷ amended R.A. No. 9165, specifically Section 21 thereof, to further strengthen the anti-drug campaign of the government. Paragraph 1 of Section 21 was amended, in that the number of witnesses required during the inventory stage was reduced from three (3) to only two (2), to wit:

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

³⁶ Id. at 277-278.

³⁷ AN ACT TO FURTHER STRENGTHEN THE ANTI-DRUG CAMPAIGN OF THE GOVERNMENT, AMENDING FOR THE PURPOSE SECTION 21 OF REPUBLIC ACT NO. 9165, OTHERWISE KNOWN AS THE "COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002". Approved on June 9, 2014.

Reyes

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 for 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 by the apprehending officer/ team, shall not render void and invalid such seizures and custody over said items. (Emphasis and underscoring Ours)

A comparison of the cited provisions show that the amendments introduced by R.A. No. 10640 reduced the number of witnesses required to be present during the inventory and taking of photographs from three to two - an elected public official AND a representative of the National Prosecution Service (DOJ) OR the media. These witnesses must be present during the inventory stage and are likewise required to sign the copies of the inventory and be given a copy of the same, to ensure that the identity and integrity of the seized items are preserved and that the police officers complied with the required procedure. Failure of the arresting officers to justify the absence of any of the required witnesses, *i.e.*, the representative from the media or the DOJ and any elected official shall constitute as a substantial gap in the chain of custody.

Since the offenses subject of this appeal were committed before the amendment introduced by R.A. 10640, the old provisions of Section 21 and its Implementing Rules and Regulations (IRR) should apply, *viz.*:

(a) The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof. Provided, that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; Provided, further that non-compliance with these requirements under justifiable grounds, as long as the integrity and evidentiary value of the

Meyer

seized items are properly preserved by the apprehending officer/ team, shall not render void and invalid such seizures of and custody over said items.

The use of the word “shall” means that compliance with the foregoing requirements is mandatory. Section 21(a) clearly states that physical inventory and the taking of photographs must be made in the presence of the accused or his/her representative or counsel and the following indispensable witnesses: **(1) an elected public official, (2) a representative from the DOJ and (3) a representative from the media.** The Court, in *People v. Mendoza*,³⁸ explained that the presence of these witnesses would preserve an unbroken chain of custody and prevent the possibility of tampering with or “planting” of evidence, viz.:

[W]ithout the insulating presence of the representative from the media or the [DOJ], or any elected public official during the seizure and marking of the [seized drugs], the evils of switching, ‘planting’ or contamination of the evidence that had tainted the buy-busts conducted under the regime of [RA] 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 [said drugs] that were evidence herein of the *corpus delicti*, and thus adversely affected the trustworthiness of the incrimination of the accused.³⁹

As culled from the records and highlighted by the testimonies of the witnesses themselves, only one out of three of the required witnesses was present during the inventory stage. There were no representatives from the DOJ and the media. Neither was it shown nor alleged by the arresting officers that earnest efforts were made to secure the attendance of these witnesses. To the Court’s mind, the lower courts relied so much on the narration of the prosecution witnesses that the integrity and evidentiary value of the seized drugs were preserved without taking into account the weight of these procedural lapses.

The Court is well aware that a perfect chain of custody is almost always impossible to achieve and so it has previously ruled that minor procedural lapses or deviations from the prescribed chain of custody are excused so long as it can be shown by the prosecution that the arresting officers put in their best effort to comply with the same and the justifiable ground for non-compliance is proven as a fact.

In the recent case of *People of the Philippines v. Romy Lim y Miranda*,⁴⁰ the Court, speaking through Associate Justice Diosdado M. Peralta, reiterated that testimonies of the prosecution witnesses must establish in detail that earnest effort to coordinate with and secure the

³⁸ 736 Phil. 749 (2014).

³⁹ Id. at 764.

⁴⁰ G.R. No. 231989, September 4, 2018.

presence of the required witnesses were made. In addition, it pointed out that given the increasing number of poorly built up drug-related cases in the courts' docket, Section 1 (A.1.10) of the Chain of Custody IRR should be enforced as a mandatory policy. The pertinent portions of the decision read:

To conclude, judicial notice is taken of the fact that arrest and seizures related to illegal drugs are typically made without a warrant; hence, subject to inquest proceedings. Relative thereto, Sections 1 (A.1.10) of the Chain of Custody [IRR] 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.⁴¹

Simply put, the prosecution cannot simply invoke the saving clause found in Section 21 - that the integrity and evidentiary value of the seized items have been preserved - without justifying their failure to comply with the requirements stated therein. Even the presumption as to regularity in the performance by police officers of their official duties cannot prevail when there has been a clear and deliberate disregard of procedural safeguards by

⁴¹ Id.



the police officers themselves. The Court's ruling in *People v. Umipang*⁴² is instructive on the matter:

Minor deviations from the procedures under R.A. 9165 would not automatically exonerate an accused from the crimes of which he or she was convicted. This is especially true when the lapses in procedure were recognized and explained in terms of justifiable grounds. There must also be a showing that the police officers intended to comply with the procedure but were thwarted by some justifiable consideration/reason. However, when there is gross disregard of the procedural safeguards prescribed in the substantive law (R.A. 9165), serious uncertainty is generated about the identity of the seized items that the prosecution presented in evidence. This uncertainty cannot be remedied by simply invoking the presumption of regularity in the performance of official duties, for a gross, systematic, or deliberate disregard of the procedural safeguards effectively produces an irregularity in the performance of official duties. As a result, the prosecution is deemed to have failed to fully establish the elements of the crimes charged, creating reasonable doubt on the criminal liability of the accused.

For the arresting officers' failure to adduce justifiable grounds, we are led to conclude from the totality of the procedural lapses committed in this case that the arresting officers deliberately disregarded the legal safeguards under R.A. 9165. These lapses effectively produced serious doubts on the integrity and identity of the *corpus delicti*, especially in the face of allegations of frame-up. Thus, for the foregoing reasons, we must resolve the doubt in favor of accused-appellant, as every fact necessary to constitute the crime must be established by proof beyond reasonable doubt.

As a final note, we reiterate our past rulings calling upon the authorities to exert greater efforts in combating the drug menace using the safeguards that our lawmakers have deemed necessary for the greater benefit of our society. The need to employ a more stringent approach to scrutinizing the evidence of the prosecution especially when the pieces of evidence were derived from a buy-bust operation redounds to the benefit of the criminal justice system by protecting civil liberties and at the same time instilling rigorous discipline on prosecutors.⁴³ (Citations omitted)

In the present case, the prosecution failed to justify their non-compliance with the requirements found in Section 21, specifically, the presence of the three required witnesses during the actual inventory of the seized items. The unjustified absence of these witnesses during the inventory stage constitutes a substantial gap in the chain of custody. Such absence cannot be cured by the simple expedient of having them sign the certificate of inventory. There being a substantial gap or break in the chain, it casts serious doubts on the integrity and evidentiary value of the *corpus delicti*. As such, Pantallano must be acquitted.

⁴² 686 Phil. 1024 (2012).

⁴³ Id. at 1053-1054.



Finally, it cannot be gainsaid that it is mandated by no less than the Constitution⁴⁴ that an accused in a criminal case shall be presumed innocent until the contrary is proved. In *People of the Philippines v. Marilou Hilario y Diana and Laline Guadayo y Royo*,⁴⁵ the Court ruled that the prosecution bears the burden to overcome such presumption. If the prosecution fails to discharge this burden, the accused deserves a judgment of acquittal. On the other hand, if the existence of proof beyond reasonable doubt is established by the prosecution, the accused gets a guilty verdict. In order to merit conviction, the prosecution must rely on the strength of its own evidence and not on the weakness of evidence presented by the defense.

WHEREFORE, the present appeal is **GRANTED**. The Decision dated April 24, 2017 of the Court of Appeals in CA-G.R. CR-HC No. 01420-MIN, convicting accused-appellant Minda Pantallano of violation of Sections 5 and 11, Article II of Republic Act No. 9165, is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant Minda Pantallano is **ACQUITTED** of the crimes charged. The Superintendent of the Correctional Institution for Women is ordered to cause her immediate release, unless she is being lawfully held in custody for any other reason. Let entry of final judgment be issued immediately.

SO ORDERED.


ANDRES B. REYES, JR.
 Associate Justice

WE CONCUR:


DIOSDADO M. PERALTA
 Associate Justice
 Chairperson

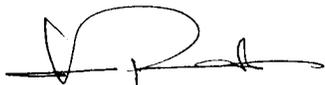
⁴⁴ Article III, Section 14(2) of the Constitution mandates:
 Sec. 14. x x x

(2) In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy, impartial, and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf. However, after arraignment, trial may proceed notwithstanding the absence of the accused provided that he has been duly notified and his failure to appear is unjustifiable.

⁴⁵ G.R. No. 210610, January 11, 2018.



MARVIC M.V.F. LEONEN
Associate Justice



RAMON PAUL L. HERNANDO
Associate Justice



ROSMARIE D. CARANDANG
Associate Justice

A T T E S T A T I O N

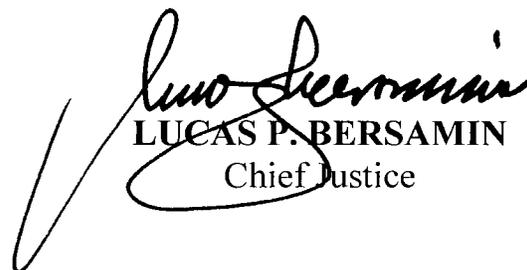
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



DIOSDADO M. PERALTA
Associate Justice
Chairperson, Third Division

C E R T I F I C A T I O N

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