

FIRST DIVISION

[G.R. No. 228132, March 11, 2020]

MICHAEL TAÑAMOR Y ACIBO, PETITIONER, V. PEOPLE OF THE PHILIPPINES, RESPONDENT.

DECISION

CAGUIOA, J:

Before the Court is a Petition for Review^[1] under Rule 45 filed by petitioner Michael Tañamor y Acibo (petitioner) assailing the Decision^[2] dated April 27, 2016 of the Court of Appeals (CA) in CA-G.R. CEB CR-HC No. 02070, which affirmed the Judgment^[3] dated April 6, 2015 of the Regional Trial Court of Dumaguete City, Branch 30 (RTC) in Criminal Case No. 2014-22151, which found petitioner guilty beyond reasonable doubt of violating Section 5, Article II of Republic Act No. (RA) 9165, otherwise known as the "Comprehensive Dangerous Drugs Act of 2002," as amended.

The Facts

An Information docketed as Criminal Case No. 2014-22151 was filed against petitioner in this case, the accusatory portion of which reads:

"That on or about the 25th day of February 2014 in the City of Dumaguete, Negros Oriental, Philippines and within the jurisdiction of this Honorable Court, the said accused, MICHAEL TAÑAMOR y' ACIBO and JUNFIL PIÑERO. a.k.a. JUN PHIL PIÑERO a.k.a. PILO a.k.a. JOHN FEL T. PIÑERO, in conspiracy, not being authorized by law, did then and there willfully, unlawfully and criminally sell and deliver to a poseur-buyer three (3) heat sealed transparent plastic sachets containing white crystalline substance with an approximate weight of 0.61 gram of methamphetamine hydrochloride, commonly known "shabu", a dangerous drug under R.A. No. 9165.

Contrary to [S]ection 5 in relation to Section 26 Article II of RA 9165."^[4]

The RTC was able to acquire jurisdiction over the person of petitioner only, as his co-accused, Junfil Piñero (Piñero), managed to escape during the buy-bust operation and has since remained at large. During arraignment, petitioner pleaded not guilty to the charge and trial ensued thereafter.^[5]

Evidence of the Prosecution

The prosecution presented the testimonies of Police Chief Inspector Josephine Llena (PCI Llena), Police Officer 2 Marvin Buenaflor (PO2 Buenaflor), Department of Justice (DOJ) representative Anthony Chilius Benlot (DOJ representative Benlot), Police Officer 1 Ricknie Briones (PO1 Briones), Barangay Kagawad Jujemar Salud Flores Canete (Kagawad Cañete), Intelligence Officer 1 Julieta Amatong (IO1 Amatong) and media practitioner Neil Rio (media practitioner Rio).^[6] Petitioner, on the other hand, testified and presented the testimonies of his father, Eleno Tañamor (Eleno), and his father's friend, one Elias Laternas (Elias).^[7]

The prosecution sought to establish that petitioner was apprehended following a legitimate buy-bust operation. Its witnesses testified as follows:

In January 2014, in the course of a debriefing on arrested persons at the Provincial Anti-Illegal Drugs Special Operations Task Group (PAIDSOTG) of the Negros Oriental Provincial Police Office, an informant came forward about a certain Mike and Pilo who, conspiring with each other, were engaged in illegal drug trade.^[8] Acting on said information, the Chief of PAIDSOTG instructed PO2 Buenaflor and PO1 Briones to conduct a series of surveillance operations on these two. Upon surveillance, said officers alleged that they were able to find out that the real names of Mike and Pilo were Michael Tañamor and Junfil Piñero, respectively, as well as confirm their involvement with the drug trade. Through an asset, a test-buy was also conducted, where the asset was able to purchase two sachets of *shabu* from petitioner and Piñero, which prompted the operatives to plan the buy-bust proper, beginning with the negotiation of a drug deal by PO2 Buenaflor and PO1 Briones.^[9]

In the afternoon of February 25, 2014, PO2 Buenaflor and PO1 Briones, with the aid of another asset, met with petitioner and Piñero in Barangay Tinago, where the asset introduced the officers to the latter. A sale was agreed upon where the police officers would purchase P4,000.00 worth of *shabu*, with the actual sale scheduled at 6:00 o'clock in the evening of the same day. Upon the officers' return to the station, the PAIDSOTG Chief called for a preoperational briefing, where PO2 Buenaflor was designated as the poseurbuyer and given one P500.00 bill as marked money, to be placed on top of a bundle of cut up pieces of paper. After the briefing, PO2 Buenaflor coordinated with the Philippine Drug Enforcement Agency (PDEA) Regional Office 7.^[10]

Thereafter, PO2 Buenaflor and PO1 Briones boarded a motorcycle and proceeded to the target site. After some time, the two officers saw petitioner and Piñero from a distance, transacting with another male person. The officers approached Piñero and asked him for the item they had agreed upon earlier in the day. Piñero took three pieces of elongated transparent plastic sachets containing *shabu* and gave them to PO2 Buenaflor, who, in turn, took the marked money from his pocket and handed them over to Piñero. Piñero, however, instructed petitioner to receive the money from PO2 Buenaflor. As soon as petitioner received the money, PO2 Buenaflor immediately held Piñero's hand and declared an arrest. Piñero, however, slipped and managed to escape despite hot pursuit. PO1 Briones, on the other hand, arrested petitioner and informed him of the nature of the charge against him as well as his constitutional rights. From petitioner was recovered the marked money.^[11]

Upon PO2 Buenaflor's return, he marked the three confiscated sachets and placed them inside a brown envelope, over which he kept sole custody. For fear of retaliation from petitioner's relatives, some of whom allegedly lived in the area, the buy-bust team decided to conduct the inventory at the Dumaguete City Police Station. There, PO2 Buenaflor conducted the inventory in the presence of petitioner, as well as Kagawad Cañete, DOJ representative Benlot and media practitioner Rio, all of whom signed the Receipt of Property Seized. With the Memorandum Request for Crime Laboratory and Drug Test, PO2 Buenaflor brought the tape-sealed brown envelope and petitioner to the Negros Oriental Provincial Crime Laboratory for examination.^[12]

At the laboratory, PCI Llena received custody of the seized items, conducted qualitative examination over the same and concluded in her Chemistry Report No. D-069-14 that they tested positive for Methamphetamine Hydrochloride. PCI Llena likewise conducted a screening and confirmatory test on the urine sample taken from petitioner, which also tested positive for Methamphetamine Hydrochloride.^[13]

Evidence of the Defense

In his defense, petitioner denied ownership of the items that were allegedly seized and submitted instead that no buy-bust operation took place before his arrest.

Petitioner specifically alleged that at 10:00 o'clock in the morning of February 25, 2014, he was at LL Eatery in Barangay Motong, eating breakfast when, without provocation, he was approached by two male persons who held his hands and forcibly brought him to a nearby vehicle with plate number FEF570. Petitioner testified that he was told to just cooperate and that the persons just wanted to ask him some questions. He added that at the time he was taken, there were more than five people in the same eatery, but that none of them was able to come to his aid.^[14]

He further submitted that on board the vehicle, he was forcibly searched without the benefit of a search warrant and that several personal items were recovered from him, including his cellular phone, a cellular phone battery and one P500.00 bill, which he intended to use as payment of his breakfast. Allegedly finding nothing from his personal items which would point to any illegal activity, one police officer named Gerald Manlan, whom he recognized as his neighbor, showed him three sachets containing white substance, after which the persons in the vehicle threatened him with an allegation of ownership of the same if he did not cooperate. He was thereafter brought to a house in Sibulan, where he was repeatedly interrogated about his knowledge of a certain "Edfox." Petitioner alleged that the persons who detained him kept insisting that he knew "Edfox" despite petitioner's persistent denial. Petitioner further alleged that he was kept in that house for over eight hours, after which he was brought to the police station.

At the station, petitioner alleged that he was made to enter a room with the same persons who took him and there he saw these persons cut some pieces of paper and place them under the P500.00 bill they recovered from him earlier. He also saw the three sealed sachets which were shown him earlier in the vehicle and petitioner was told to just relax. He allegedly saw the witnesses arrived then.^[15]

To corroborate his son's testimony, Eleno testified that in the morning of February 25, 2014, after one of his younger children came home to tell him that his son, petitioner, was taken at the LL Eatery by unidentified persons, he immediately went to the police station to check whether his son had been arrested. He was informed that petitioner was not at the station. Eleno then asked one of the police officers therein to record in its police blotter the forcible taking of petitioner, but the officer refused to do so, saying that the taking might have been related to a drug case.^[16] Eleno kept going to different police stations to see if petitioner was there. At about 8:00 o'clock in the evening, Eleno saw petitioner at the Dumaguete City Police Station, where the latter was about to be brought to the hospital for a medical check-up. Finally, about a month after petitioner was taken, Eleno said he met his friend, Elias, who told him that he saw petitioner being accosted by two persons and dragged out of LL Eatery sometime in February.^[17]

Ruling of the RTC

After trial on the merits, the RTC convicted petitioner of the crime charged in its Judgment dated April 6, 2015, with the dispositive portion reading thus:

WHEREFORE, in the light of the foregoing, the accused MICHAEL TAÑAMOR y ACIBO is hereby found GUILTY beyond reasonable doubt of the offense of illegal sale of 0.61 gram of *shabu* in violation of Section 5, in relation to Section 26, Article II of RA 9165 and is hereby sentenced to suffer a penalty of life imprisonment and to pay a fine of Five Hundred Thousand Pesos (P500,000.00).

The three (3) heat-sealed transparent plastic sachets with markings "MT/JP-BB1-02-25-14," "MT/JP-BB2-02-25-14" and "MT/JP-BB3-02-25-14," with signatures respectively, and containing an approximate weight of 0.61 gram of *shabu* are hereby confiscated and forfeited in favor of the government and to be disposed of in accordance with law.

In the service of sentence, the accused MICHAEL TAÑAMOR y ACIBO shall be credited with the full time during which he has undergone preventive imprisonment, provided he agrees voluntarily in writing to abide by the same disciplinary rules imposed upon convicted prisoners.

SO ORDERED.^[18]

In finding petitioner guilty, the RTC weighed the contradicting versions of the recital of facts of the prosecution and the defense and found the former's version more credible.^[19] The RTC gave credence to the consistent and straightforward narration of PO2 Buenaflor and POI Briones, who testified, and deemed them trustworthy.^[20] It held that petitioner was unable to overturn the general presumption of regularity of official duty in the arresting officers' favor. It also found that petitioner evidently acted in common concert with co-accused Piñero in the act of the illegal sale of *shabu*, by the former's act of receiving the buy-bust money pursuant to Piñero's instructions and that petitioner was rightly charged as a co-principal.^[21]

The RTC also upheld the presumption of regularity in the performance of official duty of the arresting officers, citing petitioner's failure to adduce clear and convincing evidence to overturn the same. It found petitioner's arrest valid, as it was made pursuant to a buy-bust operation, and that in any case, petitioner was already estopped from challenging its validity by virtue of his failure to do so before he entered his plea during arraignment. The RTC further dismissed as irrelevant the pointed irregularity in the disposition and preservation of the subject drug in the case, holding instead that the officers complied with the law and the integrity of the drug was preserved.^[22] It noted the fact that the qualitative examination conducted on petitioner's urine sample tested positive for Methamphetamine Hydrochloride although it added that the same neither constituted an element of the crime charged nor materially affected the same.^[23] Finally, the RTC dismissed petitioner's defenses for being mere words and supported only by testimonies of two biased persons, who did not actually witness the arrest.^[24]

Aggrieved, petitioner filed an appeal to the CA, mainly alleging that the RTC erred in not giving due weight to his defenses.^[25]

Ruling of the CA

In the questioned CA Decision dated April 27, 2016, the CA was unpersuaded by petitioner's contentions and affirmed his conviction.^[26] It found that the elements of the crime of illegal sale of drugs were sufficiently established. It also held that with respect to the inventory having been conducted in a place other than the site of arrest, it was nevertheless proper, given that Section 21 of the Implementing Rules and Regulations (IRR) of RA 9165 allows for the inventory to be done at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in cases of warrantless seizure.^[27] It likewise added that such substantial compliance was recognized by this Court as sufficient, owing to varied field conditions.^[28] It further dismissed petitioner's denial and allegations of frame-up based on his failure to offer supporting evidence, including the lack of witnesses, who could corroborate his story.^[29]

Petitioner filed a Motion for Reconsideration^[30] but the same was denied by the CA for lack of merit through its Resolution^[31] dated September 30, 2016.

Hence, the instant Petition.

Issue

The sole issue for the Court's resolution is whether the lower courts erred in convicting petitioner for violating Section 5, Article II of RA 9165.

The Court's Ruling

The Petition is meritorious. The unjustified, let alone admitted departures from the chain of custody, particularly the undertaking of the inventory elsewhere than in the place of arrest and the absence of the insulating witnesses at the time of seizure, lead the Court to no sounder conclusion than petitioner's acquittal.

In drug cases, the State bears the burden not only of proving the elements of the crime, but also its body or *corpus delicti*, which in these cases pertains to the dangerous drug itself.^[32] In cases involving illegal drugs, buy-bust operation has been declared as a valid and effective procedure for apprehending drug peddlers and distributors^[33] and a legally sanctioned means of trapping lawbreakers in felonious acts.^[34] Nevertheless, precisely due to the peculiar nature of a buy-bust operation, the law concomitantly requires strict compliance with procedures laid down by it to ensure that all the rights of the accused are guaranteed and the credibility of the *corpus delicti* safeguarded, in sober recognition of the fact that the character of anti-narcotics operations and the decided ease with which illegal drugs may be planted open them to a great possibility of abuse.^[35]

A long line of cases decided by the Court has demonstrated that the exacting procedures for observation during a buy-bust operation more often rise or fall on either the adherence to or non-compliance with the chain of custody rule. The chain of custody means the duly recorded authorized movements and custody of seized drugs or controlled chemicals from the time of seizure, to receipt in the forensic laboratory, to safekeeping, to presentation in court.^[36] An unbroken chain of custody is necessary in order to establish before the court that the prohibited drug confiscated or recovered from the suspect is the very same substance offered in court as exhibit; and that the identity of said drug is established with the same unwavering exactitude as that required to make a finding of guilt.^[37] This rule is imperative, under pain of rendering all seized evidence in the course of the operation incredible.

On this point, Section 21,^[38] Article II of RA 9165, as amended by RA 10640,^[39] provides for the procedure that police operatives are required to observe in order to assure the integrity of the confiscated drugs. The said provision requires that: (1) the seized items be inventoried and photographed immediately after confiscation at the place of seizure or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable; (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, and (c) a representative of the National Prosecution Service or the media; and (3) the accused or his/her representative and all of the aforesaid witnesses shall be required to sign the copies of the inventory and be given a copy thereof.

Further, Section 21(a), Article II of the IRR of RA 9165 further specifies where the physical inventory and photographing of the seized items should be done and in the presence of whom, 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 instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

- (a) The apprehending officer/team having initial custody and control of the drugs **shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of**

the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof: *Provided*, that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; *Provided, further*, that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items[.]^[40]

Given the law, *i.e.*, under Section 21, Article II of RA 9165, as reiterated in Section 21(a), Article II of the IRR, the decisive requirements that bear upon the present case are the immediacy of the physical inventory and photographing of the seized items, and the protective, insulating presence of the three required witnesses.

This Court finds that the arresting officers in this case failed to comply with these two requirements during the conduct of the buy-bust operation and the prosecution neglected to justify, let alone acknowledge these lapses, ultimately proving fatal to its case.

First, Section 21 and its IRR provide that the physical inventory and photographing of the seized items must be done: (1) immediately after seizure or confiscation; (2) in the presence of the following personalities: (a) the accused or his representative or counsel; (b) representative from the media or a representative from the National Prosecution Service; and (c) any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof; and (3) at the place where the search warrant is served or at the nearest police station or nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizure.^[41]

As to the site of the inventory and photographing, this requirement is depicted in greater detail in the internal rules and guidelines of the Philippine National Police (PNP). Under the 1999 PNP Drug Enforcement Manual,^[42] the strict procedure in the photographing and inventory of the seized items has been specified, to wit:

Anti-Drug Operational Procedures
Chapter V. Specific Rules

x x x x

B. Conduct of Operation: (As far as practicable, all operations must be officer led)

1. Buy-Bust Operation - in the conduct of buy-bust operation, the following are the procedures to be observed:

x x x x

- k. Take actual inventory of the seized evidence by means of weighing and/or physical counting, as the case may be;
- l. Prepare a detailed receipt of the confiscated evidence for issuance to the possessor (suspect) thereof;

- m. The seizing officer (normally the poseur-buyer) and the evidence custodian must mark the evidence with their initials and also indicate the date, time and place the evidence was confiscated/seized;
- n. Take photographs of the evidence while in the process of taking the inventory, especially during weighing, and if possible under existing conditions, the registered weight of the evidence on the scale must be focused by the camera; and
- o. Only the evidence custodian shall secure and preserve the evidence in an evidence bag or in appropriate container and thereafter deliver the same to the PNP CLG for laboratory examination.

In addition, in the Revised PNP Manual on Anti-Illegal Drugs Operations and Investigation (AIDSOTF-Manual), the handling, custody and disposition of the seized illegal drugs are also prescribed:

Section 2-6 Handling, Custody and Disposition of Drug and Non-Drug Evidence

2.33. During handling, custody and disposition of evidence, provisions of Section 21, RA 9165 and its IRR as amended by RA 10640 shall be strictly observed.

2.34. Photographs of pieces of evidence must be taken immediately upon discovery of such, without moving or altering its original position, including the process of recording the inventory and the weighing of illegal drugs in the presence of required witnesses, as stipulated in Section 21, Article II, RA 9165, as amended by RA 10640.

x x x x

a. Drug Evidence

- (1) Upon seizure or confiscation of illegal drugs or 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) With an elected Public Official; and
 - (c) Any representatives from the Department of Justice or Media who shall affix their signatures and who shall be given copies of the inventory.
- (2) For seized or recovered drugs covered by Search Warrants, the inventory must be conducted in the place where the Search Warrant was served.
- (3) For warrantless seizures like buy-bust operations, inventory and taking of photographs should be done at the nearest Police Station or Office of the apprehending Officer or Team.^[43]

The seeming contradiction of the third paragraph of 2.34, *i.e.*, that inventory and photographing after warrantless seizures are to be done at the nearest police station, with the general rule on "on-site" inventory and photographing, must be reconciled in that requirement of "on-site" inventory and photographing under Section 21 of RA 9165 and Section 21(a) of its IRR, must

be observed unless for reasons of practicality or exigency the nearest police station or the office of the apprehending team is the better option.

Third paragraph of 2.34 must be construed bearing in mind the main subhead of 2.34 which requires that the evidence must be photographed and inventoried without being moved or altered from its original position. The level of specificity with which the AIDSOTF-Manual depicts how the inventory and photographing should be undertaken, *i.e.*, the inventory and photographs of the seized items to be made and taken where they are found is indicative of the legislative intent to ensure that as a general rule, physical inventory and photographing are done at the site of confiscation. Such a legally contemplated and intended requirement would be negated if, in the case of warrantless seizures, the exceptional allowance of inventory and photographing at the police station be made the general rule instead of the exception.

Thus, with the seemingly contradictory clause rightly reconciled, these PNP internal rules illustrate that the inventory and photographing of seized items are done at the very site of seizure, and only in the narrow instances where such is rendered impracticable, and with a satisfactory justification therefor, may the inventory and photographing be undertaken at the nearest police station or the office of the apprehending team.

Moreover, in the event of the prosecution's acknowledgment of the police officers' failure to comply with the general rule, the liberal application of the alternative place of inventory and photographing may only be triggered upon offer of sufficient justification. In other words, mere invocation of an inconvenience that rendered the inventory impracticable at the site of seizure does not translate to compliance with Section 21 and its IRR, especially if such invocation is not sufficiently explained in the records of the case and supported by credible evidence.

This Court has also already drawn the nuances in what "immediately" entails in the operative description "immediately after seizure and confiscation." In *People v. Adobar*,^[44] the Court held in no uncertain terms:

The phrase "immediately after seizure and confiscation" means that the physical inventory and photographing of the drugs must be at the place of apprehension and/or seizure. If this is not practicable, it may be done as soon as the apprehending team reaches the nearest police station or nearest office.^[45]

Secondly, the prosecution's case must also fail on the ground that the required insulating witnesses were not present during the confiscation, but were merely "called in" at the station, both belatedly and after the process they were supposed to insulate.

Undoubtedly, the requirement of the presence of the mandatory two insulating witnesses in this case is inseparable from the requirement of physical inventory and photographing at the place of seizure. Stated differently, since the physical inventory and photographing of the seized items must, as a general rule, be done at the place of seizure, it follows that the two insulating witnesses whose presence are required during the inventory and photographing *must* also be in or within the area of the site of seizure.

Considering the notoriety of buy-bust operations as possible tools for extortion,^[46] and the seeming habit of "calling in" witnesses,^[47] the Court has already taken steps to untangle confusions on this point. In *People v. Castillo*,^[48] the Court categorically clarified:

"The requirement of conducting inventory and taking of photographs immediately after seizure and confiscation necessarily means that the **required witnesses must also be present during the seizure and confiscation."** The presence of third-party witnesses is not an empty formality in the conduct of buy-bust operations. It is not a mere rubberstamp to validate the actions taken and self-serving assurances proffered by law enforcement officers. Far from a passive gesture, the attendance of third-party witnesses ensures the identity, origin, and integrity of the items seized.^[49]

It bears emphasis that the presence of the required witnesses at the time of the apprehension and inventory is mandatory and serves a crucial purpose. In *People v. Tomawis*,^[50] the Court explained the rationale behind the requirement of the insulating witnesses:

The presence of the witnesses from the DOJ, media, and from public elective office is necessary to protect against the possibility of planting, contamination, or loss of the seized drug. Using the language of the Court in *People v. Mendoza*, without the ***insulating presence*** of the representative from the media or the DOJ and any elected public official during the seizure and marking of the 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 subject sachet that was evidence of the *corpus delicti*, and thus adversely affected the trustworthiness of the incrimination of the accused.

The presence of the three witnesses must be secured not only during the inventory but more importantly **at the time of the warrantless arrest**. It is at this point in which the presence of the three witnesses is most needed, as it is their presence at the time of seizure and confiscation that would belie any doubt as to the source, identity, and integrity of the seized drug. If the buy-bust operation is legitimately conducted, the presence of the insulating witnesses would also controvert the usual defense of frame-up as the witnesses would be able to testify that the buy-bust operation and inventory of the seized drugs were done in their presence in accordance with Section 21 of RA 9165.

The practice of police operatives of not bringing to the intended place of arrest the three witnesses, when they could easily do so — and "calling them in" to the place of inventory to witness the inventory and photographing of the drugs only after the buy-bust operation has already been finished — does not achieve the purpose of the law in having these witnesses prevent or insulate against the planting of drugs.

To restate, the presence of the three witnesses at the time of seizure and confiscation of the drugs must be secured and complied with at the time of the warrantless arrest; such that they are required to be at or near the intended place of the arrest so that they can be ready to witness the inventory and photographing of the seized and confiscated drugs "immediately after seizure and confiscation."^[51]

The presence of the representative from the media or the DOJ and any elected public official during the seizure and marking of the sachets of *shabu* protects the seizure and arrest from possibilities of switching, "planting" or contamination of the evidence, which compromise the integrity of the confiscated items. Failure to comply with this jeopardizes the trustworthiness of *corpus delicti*, breaks the chain of custody and, by result, puts the guilt of the accused in doubt.

This requirement on the presence of the insulating witnesses at the time of seizure can also be easily complied with by the buy-bust team considering that the buy-bust operation is, by its nature, a planned activity. In *People v. Umipang*,^[52] the Court called out the police officers' failure to exert earnest efforts to obtain the insulating witnesses' presence, to wit:

Indeed, the absence of these representatives during the physical inventory and the marking of the seized items does not *per se* render the confiscated items inadmissible in evidence. However, we take note that, in this case, the SAID-SOTF did not even attempt to contact the *barangay* chairperson or any member of the *barangay* council. There is no indication that they contacted other elected public officials. Neither do the records show whether the police officers tried to get in touch with any DOJ representative. Nor does the SAID-SOTF adduce any justifiable reason for failing to do so — especially considering that it had sufficient time from the moment it received information about the activities of the accused until the time of his arrest.

Thus, we find that there was no genuine and sufficient effort on the part of the apprehending police officers to look for the said representatives pursuant to Section 21(1) of R.A. 9165. A sheer statement that representatives were unavailable — without so much as an explanation on whether serious attempts were employed to look for other representatives, given the circumstances — is to be regarded as a flimsy excuse. We stress that it is the prosecution who has the positive duty to establish that earnest efforts were employed in contacting the representatives enumerated under Section 21(1) of R.A. 9165, or that there was a justifiable ground for failing to do so.^[53]

Here, the officers could have complied with the requirements of the law had they intended to, as they had days to secure the attendance of the required witnesses. Particularly, they even had the time to conduct both surveillances and a test-buy prior to the actual buy-bust. The fact that the apprehending team had days to plan and do surveillances renders the absence of the insulating witnesses at the place of operation inexcusable. That the prosecution failed to even acknowledge this lapse let alone justify it leaves excusing it unlikely.

Further, the prosecution may not hide behind the permissive tone of the saving clause of Section 21 and its IRR. As the Court explained in *People v. Reyes*:^[54]

Under the last paragraph of Section 21(a), Article II of the IRR of R.A. No. 9165, a saving mechanism has been provided to ensure that not every case of non-compliance with the procedures for the preservation of the chain of custody will irretrievably prejudice the Prosecution's case against the accused. To warrant the application of this saving mechanism, however, the Prosecution must recognize the lapse or lapses, and justify or explain them. Such justification or explanation would be the basis for applying the saving mechanism. Yet, the Prosecution did not concede such lapses, and did not even tender any token justification or explanation for them. The failure to justify or explain underscored the doubt and suspicion about the integrity of the evidence of the *corpus delicti*. With the chain of custody having been compromised, the accused deserves acquittal. x x x^[55]

The seizure of the confiscated items, including the three sachets of *shabu* weighing 0.61 gram is therefore invalid and void. The prosecution has no more evidence on which to ground petitioner's conviction, and petitioner must be acquitted.

A final point, under the prevailing circumstances, the vigor of the campaign against illegal drugs is perhaps rivaled only by the number of allegations of illegal seizures and baseless arrests, with the situation reduced to a zero-sum game. At this point, perhaps the Court may well begin to take due notice of the fact that the idea of "substantial compliance" in drug enforcement may be a spectrum of degrees of conformities that have, in far too many instances, negated the general rule of compliance, so that in the end, for purposes of protecting the rights of the accused and the trustworthiness of the prosecution, no degree is "compliant enough" until it is only but *full* adherence to the letter and spirit of the law.

WHEREFORE, in view of the foregoing, the Petition is hereby **GRANTED**. The Decision dated April 27, 2016 of the Court of Appeals in CA-G.R. CEB CR-HC No. 02070 is hereby **REVERSED** and **SET ASIDE**. Accordingly, petitioner Michael Tañamor y Acibo is **ACQUITTED** of the crime charged on the ground of reasonable doubt, and is **ORDERED IMMEDIATELY RELEASED** from detention unless he is being lawfully held for another cause. Let an entry of final judgment be issued immediately.

Let a copy of this Decision be furnished the Superintendent of the New Bilibid Prison, Muntinlupa City, 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.

SO ORDERED.

Peralta, C.J., (Chairperson), J. Reyes, Jr., Lazaro-Javier, and Lopez, JJ., concur.

- [1] *Rollo*, pp. 12-34.
- [2] *Id.* at 108-121; penned by Associate Justice Edgardo L. Delos Santos (now a Member of this Court) with Associate Justices Edward B. Contreras and Geraldine C. Fiel-Macaraig, concurring.
- [3] *Id.* at 63-77; penned by Judge Rafael Crescencio C. Tan, Jr.
- [4] *Id.* at 63; italics and underscoring omitted.
- [5] *Id.*
- [6] *Id.* at 63-64.
- [7] *Id.* at 67.
- [8] *Id.* at 64.
- [9] *Id.*
- [10] *Id.* at 64-65.
- [11] *Id.* at 65.
- [12] *Id.* at 66-67.
- [13] *Id.* at 67.
- [14] *Id.* at 68.
- [15] *Id.*
- [16] *Id.* at 68-69.
- [17] *Id.* at 69.
- [18] *Id.* at 76-77.
- [19] *Id.* at 73.
- [20] *Id.* at 75-76.
- [21] *Id.* at 73-74.
- [22] *Id.* at 74-75.
- [23] *Id.* at 75.

- [24] Id. at 76.
- [25] Id. at 116.
- [26] Id. at 121.
- [27] Id. at 118.
- [28] Id., citing *People v. Lorena*, 654 Phil. 131 (2013).
- [29] Id. at 119-120.
- [30] Id. at 122-128.
- [31] Id. at 142-143.
- [32] *People v. Guzon*, 719 Phil. 441, 450-451 (2013).
- [33] *People v. Mantalaba*, 669 Phil. 461, 471 (2011); citation omitted.
- [34] *People v. Chua Uy*, 384 Phil. 70, 85 (2000).
- [35] *People v. Santos, Jr.*, 562 Phil. 458, 471 (2007), citing *People v. Tan*, 401 Phil. 259, 273 (2000).
- [36] *People v. Guzon*, supra at 451, citing *People v. Dumaplin*, 700 Phil. 737 (2012).
- [37] Id., citing *People v. Remigio*, 700 Phil. 452 (2012).
- [38] 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 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[.]

[39] Entitled "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'" (2014).

[40] Emphasis supplied.

[41] See *People v. Tomas*, G.R. No. 241631, March 11, 2019.

[42] PNPM-D-O-3-1-99 [NG].

[43] Emphasis supplied.

[44] G.R. No. 222559, June 6, 2018, 865 SCRA 220.

[45] Id. at 251; citation and underscoring omitted, emphasis supplied.

[46] *People v. Segundo*, 814 Phil. 697, 719 (2017); citation omitted.

[47] See *People v. Ordiz*, G.R. No. 206767, September 11, 2019; *People v. Narvas*, G.R. No. 241254, July 8, 2019; *People v. Dagdag*, G.R. No. 225503, June 26, 2019; *People v. Nieves*, G.R. No. 239787, June 19, 2019; *People v. Malana*, G.R. No. 233747, December 5, 2018; *People v. Musor*, G.R. No. 231843, November 7, 2018; and *People v. Tomawis*, G.R. No. 228890, April 18, 2018, 862 SCRA 131.

[48] G.R. No. 238339, August 7, 2019.

[49] Id.; citation omitted, emphasis supplied.

[50] Supra note 47.

[51] Id. at 149-150; citations omitted, emphasis and underscoring in the original.

[52] 686 Phil. 1024 (2012).

[53] Id. at 1052-1053; citations omitted, italics in the original.

[54] 797 Phil. 671 (2016).

[55] Id. at 690; citations omitted.