

EN BANC

[G.R. No. 231989, September 04, 2018]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROMY LIM Y MIRANDA, ACCUSED-APPELLANT.

DECISION

PERALTA, J.:

On appeal is the February 23, 2017 Decision^[1] of the Court of Appeals (CA) in CA-G.R. CR HC No. 01280-MIN, which affirmed the September 24, 2013 Decision^[2] of Regional Trial Court (RTC), Branch 25, Cagayan de Oro City, in Criminal Case Nos. 2010-1073 and 2010-1074, finding accused-appellant Romy Lim y Miranda (*Lim*) guilty of violating Sections 11 and 5, respectively, of Article II of Republic Act (R.A.) No. 9165, or the *Comprehensive Dangerous Drugs Act of 2002*.

In an Information dated October 21, 2010, Lim was charged with illegal possession of Methamphetamine Hydrochloride (*shabu*), committed as follows:

That on or about October 19, 2010, at more or less 10:00 o'clock in the evening, at 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, criminally and knowingly have in his possession, custody and control one (1) heat-sealed transparent plastic sachet containing Methamphetamine hydrochloride, locally known as Shabu, a dangerous drug, with a total weight of 0.02 gram, accused well-knowing that the substance recovered from his possession is a dangerous drug.

Contrary to, and in violation of, Section 11, Article II of Republic Act No. 9165.^[3]

On even date, Lim, together with his stepson, Eldie Gorres y Nave (*Gorres*), was also indicted for illegal sale of *shabu*, committed as follows:

That on or about October 19, 2010, at more or less 10:00 o'clock in the evening, at 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 being authorized by law to sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drugs, did then and there willfully, unlawfully, criminally and knowingly sell and/or offer for sale, and give away to a PDEA Agent acting as poseur-buyer One (1) heat-sealed transparent plastic sachet containing Methamphetamine hydrochloride, locally known as Shabu, a dangerous drug, with a total weight of 0.02 gram, accused knowing the same to be a dangerous drug, in consideration of Five Hundred Pesos (Php500.00) consisting of one piece five hundred peso bill, with Serial No. FZ386932, which was previously marked and recorded for the purpose of the buy-bust operation.

Contrary to Section 5, Paragraph 1, Article II of Republic Act No. 9165.^[4]

In their arraignment, Lim and Gorres pleaded not guilty.^[5] They were detained in the city jail

during the joint trial of the cases.^[6]

The prosecution presented Intelligence Officer (*IO*) 1 Albert Orellan, IO1 Nestle Carin, IO2 Vincent Orcales, and Police Senior Inspector (*PSI*) Charity Caceres. Aside from both accused, Rubenia Gorres testified for the defense.

Version of the Prosecution

Around 8:00 p.m. on October 19, 2010, IO1 Orellan and his teammates were at Regional Office X of the Philippine Drug Enforcement Agency (*PDEA*). Based on a report of a confidential informant (*CI*) that a certain "Romy" has been engaged in the sale of prohibited drugs in Zone 7, Cabina, Bonbon, Cagayan de Oro City, they were directed by their Regional Director, Lt. Col. Edwin Layese, to gather for a buy-bust operation. During the briefing, IO2 Orcales, IO1 Orellan, and IO1 Carin were assigned as the team leader, the arresting officer/back-up/evidence custodian, and the *poseur-buyer*, respectively. The team prepared a P500.00 bill as buy-bust money (with its serial number entered in the *PDEA* blotter), the Coordination Form for the nearest police station, and other related documents.

Using their service vehicle, the team left the regional office about 15 minutes before 10:00 p.m. and arrived in the target area at 10:00 p.m., more or less. IO1 Carin and the CI alighted from the vehicle near the corner leading to the house of "Romy," while IO1 Orellan and the other team members disembarked a few meters after and positioned themselves in the area to observe. IO1 Carin and the CI turned at the corner and stopped in front of a house. The CI knocked at the door and uttered, "*ayo, nang Romy.*" Gorres came out and invited them to enter. Inside, Lim was sitting on the sofa while watching the television. When the CI introduced IO1 Carin as a *shabu* buyer, Lim nodded and told Gorres to get one inside the bedroom. Gorres stood up and did as instructed. After he came out, he handed a small medicine box to Lim, who then took one piece of heat-sealed transparent plastic of *shabu* and gave it to IO1 Carin. In turn, IO1 Carin paid him with the buy-bust money.

After examining the plastic sachet, IO1 Carin executed a missed call to IO1 Orellan, which was the pre-arranged signal. The latter, with the rest of the team members, immediately rushed to Lim's house. When they arrived, IO1 Carin and the CI were standing near the door. They then entered the house because the gate was opened. IO1 Orellan declared that they were *PDEA* agents and informed Lim and Gorres, who were visibly surprised, of their arrest for selling dangerous drug. They were ordered to put their hands on their heads and to squat on the floor. IO1 Orellan recited the Miranda rights to them. Thereafter, IO1 Orellan conducted a body search on both.

When he frisked Lim, no deadly weapon was found, but something was bulging in his pocket. IO1 Orellan ordered him to pull it out. Inside the pocket were the buy-bust money and a transparent rectangular plastic box about 3x4 inches in size. They could see that it contained a plastic sachet of a white substance. As for Gorres, no weapon or illegal drug was seized.

IO1 Orellan took into custody the P500.00 bill, the plastic box with the plastic sachet of white substance, and a disposable lighter. IO1 Carin turned over to him the plastic sachet that she bought from Lim. While in the house, IO1 Orellan marked the two plastic sachets. Despite exerting efforts to secure the attendance of the representative from the media and *barangay* officials, nobody arrived to witness the inventory-taking.

The buy-bust team brought Lim and Gorres to the *PDEA* Regional Office, with IO1 Orellan in possession of the seized items. Upon arrival, they "booked" the two accused and prepared the letters requesting for the laboratory examination on the drug evidence and for the drug test on the arrested suspects as well as the documents for the filing of the case. Likewise, IO1 Orellan made the Inventory Receipt of the confiscated items. It was not signed by Lim and Gorres. Also, there was no signature of an elected public official and the representatives of the Department of Justice (*DOJ*) and the media as witnesses. Pictures of both accused and the evidence seized were taken.

The day after, IO1 Orellan and IO1 Carin delivered both accused and the drug specimens to Regional Crime Laboratory Office 10. IO1 Orellan was in possession of the sachets of *shabu* from the regional office to the crime lab. PSI Caceres, who was a Forensic Chemist, and Police Officer 2 (PO2) Bajas^[7] personally received the letter-requests and the two pieces of heat-sealed transparent plastic sachet containing white crystalline substance. PSI Caceres got urine samples from Lim and Gorres and conducted screening and confirmatory tests on them. Based on her examination, only Lim was found positive for the presence of *shabu*. The result was shown in Chemistry Report No. DTCRIM-196 and 197-2010. With respect to the two sachets of white crystalline substance, both were found to be positive of *shabu* after a chromatographic examination was conducted by PSI Caceres. Her findings were reflected in Chemistry Report No. D-228-2010. PSI Caceres, likewise, put her own marking on the cellophane containing the two sachets of *shabu*. After that, she gave them to the evidence custodian. As to the buy-bust money, the arresting team turned it over to the fiscal's office during the inquest.

Version of the Defense

Around 10:00 p.m. on October 19, 2010, Lim and Gorres were in their house in Cabina, Bonbon, Cagayan de Oro City. Lim was sleeping in the bedroom, while Gorres was watching the television. When the latter heard that somebody jumped over their gate, he stood up to verify. Before he could reach the door, however, it was already forced opened by the repeated pulling and kicking of men in civilian clothing. They entered the house, pointed their firearms at him, instructed him to keep still, boxed his chest, slapped his ears, and handcuffed him. They inquired on where the *shabu* was, but he invoked his innocence. When they asked the whereabouts of "Romy," he answered that he was sleeping inside the bedroom. So the men went there and kicked the door open. Lim was then surprised as a gun was pointed at his head. He questioned them on what was it all about, but he was told to keep quiet. The men let him and Gorres sit on a bench. Lim was apprised of his Miranda rights. Thereafter, the two were brought to the PDEA Regional Office and the crime laboratory. During the inquest proceedings, Lim admitted, albeit without the assistance of a counsel, ownership of the two sachets of *shabu* because he was afraid that the police would imprison him. Like Gorres, he was not involved in drugs at the time of his arrest. Unlike him, however, he was previously arrested by the PDEA agents but was acquitted in the case. Both Lim and Gorres acknowledged that they did not have any quarrel with the PDEA agents and that neither do they have grudges against them or *vice-versa*.

Rubenia, Lim's live-in partner and the mother of Gorres, was at her sister's house in Pita, Pasil, Kauswagan the night when the arrests were made. The following day, she returned home and noticed that the door was opened and its lock was destroyed. She took pictures of the damage and offered the same as exhibits for the defense, which the court admitted as part of her testimony.

RTC Ruling

After trial, the RTC handed a guilty verdict on Lim for illegal possession and sale of *shabu* and acquitted Gorres for lack of sufficient evidence linking him as a conspirator. The *fallo* of the September 24, 2013 Decision states:

WHEREFORE, premises considered, this Court finds that:

1. In Criminal Case No. 2010-1073, accused ROMY LIM y MIRANDA is hereby found GUILTY of violating Section 11, Article II of R.A. 9165 and is hereby sentenced to suffer the penalty of imprisonment ranging from twelve [12] years and one [1] day to thirteen [13] years, and to pay Fine in the amount of Three Hundred Thousand Pesos [P300,000.00] without subsidiary imprisonment in case of non-payment of Fine;

2. In Criminal Case No. 2010-1074, accused ROMY LIM y MIRANDA is hereby

found GUILTY of violating Section 5, Article II of R.A. 9165, and is hereby sentenced to suffer the penalty of LIFE IMPRISONMENT and to pay the Fine in the amount of Five Hundred Thousand Pesos [P500,000.00].

3. In Criminal Case No. 2010-1074, accused ELDIE GORRES y NAVE is hereby ACQUITTED of the offense charged for failure of the prosecution to prove his guilt beyond reasonable doubt. The Warden of the BJMP having custody of ELDIE GORRES y Nave, is hereby directed to immediately release him from detention unless he is being charged of other crimes which will justify his continued incarceration.^[8]

With regard to the illegal possession of a sachet of *shabu*, the RTC held that the weight of evidence favors the positive testimony of IO1 Orellan over the feeble and uncorroborated denial of Lim. As to the sale of *shabu*, it ruled that the prosecution was able to establish the identity of the buyer, the seller, the money paid to the seller, and the delivery of the *shabu*. The testimony of IO1 Carin was viewed as simple, straightforward and without any hesitation or prevarication as she detailed in a credible manner the buy-bust transaction that occurred. Between the two conflicting versions that are poles apart, the RTC found the prosecution evidence worthy of credence and no reason to disbelieve in the absence of an iota of malice, ill-will, revenge or resentment preceding and pervading the arrest of Lim. On the chain of custody of evidence, it was accepted with moral certainty that the PDEA operatives were able to preserve the integrity and probative value of the seized items.

In so far as Gorres is concerned, the RTC opined that the evidence presented were not strong enough to support the claim that there was conspiracy between him and Lim because it was insufficiently shown that he knew what the box contained. It also noted Chemistry Report No. DTCRIM 196 & 197-2010, which indicated that Gorres was "NEGATIVE" of the presence of any illicit drug based on his urine sample.

CA Ruling

On appeal, the CA affirmed the RTC Decision. It agreed with the finding of the trial court that the prosecution adequately established all the elements of illegal sale of a dangerous drug as the collective evidence presented during the trial showed that a valid buy-bust operation was conducted. Likewise, all the elements of illegal possession of a dangerous drug was proven. Lim resorted to denial and could not present any proof or justification that he was fully authorized by law to possess the same. The CA was unconvinced with his contention that the prosecution failed to prove the identity and integrity of the seized prohibited drugs. For the appellate court, it was able to demonstrate that the integrity and evidentiary value of the confiscated drugs were not compromised. The witnesses for the prosecution were able to testify on every link in the chain of custody, establishing the crucial link in the chain from the time the seized items were first discovered until they were brought for examination and offered in evidence in court. Anent Lim's defense of denial and frame-up, the CA did not appreciate the same due to lack of clear and convincing evidence that the police officers were inspired by an improper motive. Instead, the presumption of regularity in the performance of official duty was applied.

Before Us, both Lim and the People manifested that they would no longer file a Supplemental Brief, taking into account the thorough and substantial discussions of the issues in their respective appeal briefs before the CA.^[9] Essentially, Lim maintains that the case records are bereft of evidence showing that the buy-bust team followed the procedure mandated in Section 21(1), Article II of R.A. No. 9165.

Our Ruling

The judgment of conviction is reversed and set aside, and Lim should be acquitted based on reasonable doubt.

At the time of the commission of the crimes, the law applicable is R.A. No. 9165.^[10] Section 1(b) of Dangerous Drugs Board Regulation No. 1, Series of 2002, which implements the law, defines chain of custody as-

the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction. Such record of movements and custody of seized item shall include the identity and signature of the person who held temporary custody of the seized item, the date and time when such transfer of custody were made in the course of safekeeping and use in court as evidence, and the final disposition.^[11]

The chain of custody rule is but a variation of the principle that real evidence must be authenticated prior to its admission into evidence.^[12] To establish a chain of custody sufficient to make evidence admissible, the proponent needs only to prove a **rational basis** from which to conclude that the evidence is what the party claims it to be.^[13] In other words, in a criminal case, the prosecution must offer sufficient evidence from which the trier of fact could **reasonably believe** that an item still is what the government claims it to be.^[14] Specifically in the prosecution of illegal drugs, the well-established federal evidentiary rule in the United States is that when the evidence is not readily identifiable and is susceptible to alteration by tampering or contamination, courts require a more stringent foundation entailing a chain of custody of the item with **sufficient completeness** to render it improbable that the original item has either been exchanged with another or been contaminated or tampered with.^[15] This was adopted in *Mallillin v. People*,^[16] where this Court also discussed how, ideally, the chain of custody of seized items should be established:

As a method of authenticating evidence, the chain of custody rule requires that the admission of an exhibit be preceded by evidence sufficient to support a finding that the matter in question is what the proponent claims it to be. It would include testimony about every link in the chain, from the moment the item was picked up to the time it is offered into evidence, in such a way that every person who touched the exhibit would describe how and from whom it was received, where it was and what happened to it while in the witness' possession, the condition in which it was received and the condition in which it was delivered to the next link in the chain. These witnesses would then describe the precautions taken to ensure that there had been no change in the condition of the item and no opportunity for someone not in the chain to have possession of the same.^[17]

Thus, the links in the chain of custody that must be established are: (1) the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; (2) the turnover of the seized illegal drug by the apprehending officer to the investigating officer; (3) the turnover of the illegal drug by the investigating officer to the forensic chemist for laboratory examination; and (4) the turnover and submission of the illegal drug from the forensic chemist to the court.^[18]

Seizure and marking of the illegal drug as well as the turnover by the apprehending officer to the investigating officer

Section 21(1), Article II of R.A. No. 9165 states:

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[.]^[19]

Supplementing the above-quoted provision, Section 21(a) of the Implementing Rules and Regulations (IRR) of R.A. No. 9165 mandates:

(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.^[20]

On July 15, 2014, R.A. No. 10640 was approved to amend R.A. No. 9165. Among other modifications, it essentially incorporated the saving clause contained in the IRR, thus:

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

In her Sponsorship Speech on Senate Bill No. 2273, which eventually became R.A. No. 10640, Senator Grace Poe admitted that "while Section 21 was enshrined in the Comprehensive Dangerous Drugs Act to safeguard the integrity of the evidence acquired and prevent planting of evidence, the application of said section resulted in the ineffectiveness of the government's campaign to stop increasing drug addiction and also, in the conflicting decisions of the courts."^[21] Specifically, she cited that "compliance with the rule on witnesses during the

physical inventory is difficult. For one, media representatives are not always available in all comers of the Philippines, especially in more remote areas. For another, there were instances where elected barangay officials themselves were involved in the punishable acts apprehended. "[22] In addition, "[t]he requirement that inventory is required to be done in police station is also very limiting. Most police stations appeared to be far from locations where accused persons were apprehended." [23]

Similarly, Senator Vicente C. Sotto III manifested that in view of the substantial number of acquittals in drug-related cases due to the varying interpretations of the prosecutors and the judges on Section 21 of R.A. No. 9165, there is a need for "certain adjustments so that we can plug the loopholes in our existing law" and "ensure [its] standard implementation." [24] In his Co-sponsorship Speech, he noted:

Numerous drug trafficking activities can be traced to operations of highly organized and powerful local and international syndicates. The presence of such syndicates that have the resources and the capability to mount a counter-assault to apprehending law enforcers makes the requirement of Section 21(a) impracticable for law enforcers to comply with. It makes the place of seizure extremely unsafe for the proper inventory and photograph of seized illegal drugs.

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Section 21(a) of RA 9165 needs to be amended to address the foregoing situation. We did not realize this in 2002 where the safety of the law enforcers and other persons required to be present in the inventory and photography of seized illegal drugs and the preservation of the very existence of seized illegal drugs itself are threatened by an immediate retaliatory action of drug syndicates at the place of seizure. The place where the seized drugs may be inventoried and photographed has to include a location where the seized drugs as well as the persons who are required to be present during the inventory and photograph are safe and secure from extreme danger.

It is proposed that the physical inventory and taking of photographs of seized illegal drugs be allowed to be conducted either in the place of seizure or at the nearest police station or office of the apprehending law enforcers. The proposal will provide effective measures to ensure the integrity of seized illegal drugs since a safe location makes it more probable for an inventory and photograph of seized illegal drugs to be properly conducted, thereby reducing the incidents of dismissal of drug cases due to technicalities.

Non-observance of the prescribed procedures should not automatically mean that the seizure or confiscation is invalid or illegal, as long as the law enforcement officers could justify the same and could prove that the integrity and the evidentiary value of the seized items are not tainted. This is the effect of the inclusion in the proposal to amend the phrase "justifiable grounds." There are instances wherein there are no media people or representatives from the DOJ available and the absence of these witnesses should not automatically invalidate the drug operation conducted. Even the presence of a public local elected official also is sometimes impossible especially if the elected official is afraid or scared. [25]

We have held that the immediate physical inventory and photograph of the confiscated items at the place of arrest may be excused in instances when the safety and security of the apprehending officers and the witnesses required by law or of the items seized are threatened by immediate or extreme danger such as retaliatory action of those who have the resources and capability to mount a counter-assault. [26] The present case is not one of those.

Here, IO1 Orellan took into custody the P500.00 bill, the plastic box with the plastic sachet of white substance, and a disposable lighter. IO1 Carin also turned over to him the plastic sachet that she bought from Lim. While in the house, IO1 Orellan marked the two plastic sachets. IO1 Orellan testified that he immediately conducted the marking and physical inventory of the two sachets of *shabu*.^[27] To ensure that they were not interchanged, he separately marked the item sold by Lim to IO1 Carin and the one that he recovered from his possession upon body search as BB AEO 10-19-10 and AEO-RI 10-19-10, respectively, with both bearing his initial/signature.^[28]

Evident, however, is the absence of an elected public official and representatives of the DOJ and the media to witness the physical inventory and photograph of the seized items.^[29] In fact, their signatures do not appear in the Inventory Receipt.

The Court stressed in *People v. Vicente Sipin y De Castro*:^[30]

The prosecution bears the burden of proving a valid cause for non-compliance with the procedure laid down in Section 21 of R.A. No. 9165, as amended. It has the positive duty to demonstrate observance thereto in such a way that during the trial proceedings, it must initiate in acknowledging and justifying any perceived deviations from the requirements of law. Its failure to follow the mandated procedure must be adequately explained, and must be proven as a fact in accordance with the rules on evidence. It should take note that the rules require that the apprehending officers do not simply mention a justifiable ground, but also clearly state this ground in their sworn affidavit, coupled with a statement on the steps they took to preserve the integrity of the seized items. Strict adherence to Section 21 is required where the quantity of illegal drugs seized is miniscule, since it is highly susceptible to planting, tampering or alteration of evidence.^[31]

It must be **alleged and proved** that the presence of the three witnesses to the physical inventory and photograph of the illegal drug seized was not obtained due to reason/s such as:

(1) their attendance was impossible because the place of arrest was a remote area; (2) their safety during the inventory and photograph of the seized drugs was threatened by an immediate retaliatory action of the accused or any person/s acting for and in his/her behalf; (3) the elected official themselves were involved in the punishable acts sought to be apprehended; (4) earnest efforts to secure the presence of a DOJ or media representative and an elected public official within the period required under Article 125 of the Revised Penal Code prove futile through no fault of the arresting officers, who face the threat of being charged with arbitrary detention; or (5) time constraints and urgency of the anti-drug operations, which often rely on tips of confidential assets, prevented the law enforcers from obtaining the presence of the required witnesses even before the offenders could escape.^[32]

Earnest effort to secure the attendance of the necessary witnesses must be proven. *People v. Ramos*^[33] requires:

It is well to note that the absence of these required witnesses does not *per se* render the confiscated items inadmissible. However, a justifiable reason for such failure or **a showing of any genuine and sufficient effort to secure the required witnesses** under Section 21 of RA 9165 must be adduced. In *People v. Umipang*, the Court held that the prosecution must show that **earnest efforts** were employed in contacting the representatives enumerated under the law for "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." Verily, mere statements of

unavailability, absent actual serious attempts to contact the required witnesses are unacceptable as justified grounds for non-compliance. These considerations arise from the fact that police officers are ordinarily given sufficient time - beginning from the moment they have received the information about the activities of the accused until the time of his arrest - to prepare for a buy-bust operation 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 of RA 9165. As such, police officers are 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 circumstances, their actions were reasonable.^[34]

In this case, IO1 Orellan testified that no members of the media and barangay officials arrived at the crime scene because it was late at night and it was raining, making it unsafe for them to wait at Lim's house.^[35] IO2 Orcales similarly declared that the inventory was made in the PDEA office considering that it was late in the evening and there were no available media representative and barangay officials despite their effort to contact them.^[36] He admitted that there are times when they do not inform the barangay officials prior to their operation as they might leak the confidential information.^[37] We are of the view that these justifications are unacceptable as there was no genuine and sufficient attempt to comply with the law.

The testimony of team-leader IO2 Orcales negates any effort on the part of the buy-bust team to secure the presence of a barangay official during the operation:

ATTY. DEMECILLO:

X X X X

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

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

Q Why?

A We do not contact them because we do not trust them. They might leak our information.^[38]

The prosecution likewise failed to explain why they did not secure the presence of a representative from the Department the arresting officer, IO1 Orellan, stated in his Affidavit that they only tried to coordinate with the barangay officials and the media, the testimonies of the prosecution witnesses failed to show that they tried to contact a DOJ representative.

The testimonies of the prosecution witnesses also failed to establish the details of an earnest effort to coordinate with and secure presence of the required witnesses. They also failed to explain why the buy-bust team felt "unsafe" in waiting for the representatives in Lim's house, considering that the team is composed of at least ten (10) members, and the two accused were the only persons in the house.

It bears emphasis that the rule that strict adherence to the mandatory requirements of Section 21(1) of R.A. No. 9165, as amended, and its IRR may be excused as long as the integrity and the evidentiary value of the confiscated items are properly preserved applies not just on arrest and/or seizure by reason of a legitimate buy-bust operation but also on those lawfully made in air or sea port, detention cell or national penitentiary, checkpoint, moving vehicle, local or international package/parcel/mail, or those by virtue of a consented search, stop and frisk

(*Terry search*), search incident to a lawful arrest, or application of plain view doctrine where time is of the essence and the arrest and/or seizure is/are not planned, arranged or scheduled in advance.

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

A.1.10. Any justification or explanation in cases of noncompliance with the requirements of Section 21 (1) of R.A. No. 9165, as amended, shall be clearly stated in the sworn statements/affidavits of the apprehending/seizing officers, as well as the steps taken to preserve the integrity and evidentiary value of the seized/confiscated items. Certification or record of coordination for operating units other than the PDEA pursuant to Section 86 (a) and (b), Article IX of the IRR of R.A. No. 9165 shall be presented.^[39]

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,^[40] Rule 112, Rules of Court.

WHEREFORE, premises considered, the February 23, 2017 Decision of the Court of Appeals in CA-G.R. CR HC No. 01280-MIN, which affirmed the September 24, 2013 Decision of Regional Trial Court, Branch 25, Cagayan de Oro City, in Criminal Cases Nos. 2010-1073 and 2010-1074, finding accused-appellant Romy Lim y Miranda guilty of violating Sections 11 and 5, respectively, of Article II of Republic Act No. 9165, is **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant Romy Lim y Miranda is **ACQUITTED** on 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 Davao Prison and Penal Farm, B.E. Dujali, Davao del Norte, for immediate implementation. The said Director is **ORDERED** to **REPORT** to this Court within five (5) days from receipt of this Decision the action he has taken.

Let copies of this Decision be furnished to the Secretary of the Department of Justice, as well as to the Head/Chief of the National Prosecution Service, the Office of the Solicitor General, the Public Attorney's Office, the Philippine National Police, the Philippine Drug Enforcement Agency, the National Bureau of Investigation, and the Integrated Bar of the Philippines for their information and guidance. Likewise, the Office of the Court Administrator is

DIRECTED to **DISSEMINATE** copies of this Decision to all trial courts, including the Court of Appeals.

SO ORDERED.

Leonardo-De Castro, C.J., Carpio, Bersamin, Perlas-Bernabe, Tijam, Reyes, A., Jr., Gesmundo, and Reyes, Jr. J., JJ., concur.
Del Castillo, J., On wellness leave
Leonen, and Caguioa, JJ., See separate concurring opinion.
Jardeleza, J., no part prior OSG action.

September 21, 2018

NOTICE OF JUDGMENT

Sirs/Mesdames:

Please take notice that on **September 4, 2018** a Decision, copy attached herewith, was rendered by the Supreme Court in the above-entitled case, the original of which was received by this Office on September 26, 2018 at 4:05 a.m.

Very truly yours,

(SGD.) EDGAR O. ARICHETA
Clerk of Court

* On wellness leave.

** No part.

[1] Penned by Associate Justice Ronaldo B. Martin, with Associate Justices Romulo V. Borja and Oscar V. Badelles, concurring; *rollo*, pp. 3-19; *CA rollo*, pp. 86-102.

[2] Records, pp. 117-125; *CA rollo*, pp. 32-40.

[3] Records (Criminal Case No. 2010-1073), pp. 3-4.

[4] Records (Criminal Case No. 2010-1074), pp. 3-4.

[5] Records (Criminal Case No. 2010-1073), pp. 19-20; records (Criminal Case No. 2010-1074), pp. 20-22.

[6] *Id.* at 2.

[7] Spelled as "Bajar" in the Request for Laboratory Examination on Drug Evidence (See Records of Criminal Case No. 2010-1073 [pp. 9-10] and Criminal Case No. 2010-1074 [p. 9A]).

[8] Records (Criminal Case No. 2010-1073), pp. 124-125; *CA rollo*, pp. 39-40.

[9] *Rollo*, pp. 26-35.

[10] R.A. No. 9165 took effect on July 4, 2002 (See *People v. De la Cruz*, 591 Phil. 259, 272 [2008]).

[11] See *People v. Badilla*, 794 Phil. 263, 278 (2016); *People v. Arenas*, 791 Phil. 601, 610 (2016); and *Saraum v. People*, 779 Phil. 122, 132 (2016).

[12] *United States v. Rawlins*, 606 F.3d 73 (2010).

[13] *United States v. Rawlins*, *supra* note 12, as cited in *United States v. Mehmood*, 2018 U.S. App. LEXIS 19232 (2018); *United States v. De Jesus-Concepcion*, 652 Fed. Appx. 134 (2016); *United States v. Rodriguez*, 2015 U.S. Dist. LEXIS 35215 (2015); and *United States v. Mark*, 2012 U.S. Dist. LEXIS 95130 (2012).

[14] See *United States v. Rawlins*, *supra* note 12, as cited in *United States v. Mark*, *supra* note 13.

[15] See *United States v. Cardenas*, 864 F.2d 1528 (1989), as cited in *United States v. Yeley-Davis*, 632 F.3d 673 (2011); *United States v. Solis*, 55 F. Supp. 2d 1182 (1999); *United States v. Anderson*, 1994 U.S. App. LEXIS 9193 (1994); *United States v. Hogg*, 1993 U.S. App. LEXIS 13732 (1993); *United States v. Rodriguez-Garcia*, 983 F.2d 1563 (1993); *United States v. Johnson*, 977 F.2d 1360 (1992); and *United States v. Clonts*, 966 F.2d 1366 (1992).

[16] *Mallillin v. People*, 576 Phil. 576 (2008).

[17] *Mallillin v. People*, *supra*, at 587, as cited in *People v. Tamano*, G.R. No. 208643, December 5, 2016, 812 SCRA 203, 228-229; *People v. Badilla*, *supra* note 11, at 280; *Saraum v. People*, *supra* note 11, at 132-133; *People v. Dalawis*, 772 Phil. 406, 417-418 (2015); and *People v. Flores*, 765 Phil. 535, 541-542 (2015). It appears that *Mallillin* was erroneously cited as "*Lopez v. People*" in *People v. De la Cruz*, 589 Phil. 259 (2008), *People v. Sanchez*, 590 Phil. 214 (2008), *People v. Garcia*, 599 Phil. 416 (2009), *People v. Denoman*, 612 Phil. 1165 (2009), and *People v. Abelarde*, G.R. No. 215713, January 22, 2018.

[18] *People v. Vicente Sipin y De Castro*, G.R. No. 224290, June 11, 2018; *People v. Amaro*, 786 Phil. 139, 148 (2016); and *People v. Enad*, 780 Phil. 346, 358 (2016).

[19] See *People v. Sic-Open*, 795 Phil. 859, 872 (2016); *People v. Badilla*, *supra* note 11, at 275-276; *People v. De la Cruz*, 783 Phil. 620, 632 (2016); *People v. Asislo*, 778 Phil. 509, 516 (2016); *People v. Dalawis*, *supra* note 17, at 416; and *People v. Flores*, *supra* note 17, at 540.

[20] *People v. Sic-Open*, *supra* note 19, at 873; *People v. Badilla*, *supra* note 11, at 276; *People v. De la Cruz*, *supra* note 19, at 633; *People v. Asislo*, *supra* note 19, at 516-517; *People v. Dalawis*, *supra* note 17, at 417; and *People v. Flores*, *supra* note 17, at 541.

[21] Senate Journal. Session No. 80. 16th Congress, 1st Regular Session. June 4, 2014. p. 348.

[22] *Id*

[23] *Id*.

[24] *Id* at 349.

[25] *Id.* at 349-350.

[26] See *People v. Mola*, G.R. No. 226481, April 18, 2018.

[27] TSN, June 2, 2011, pp. 25-28.

[28] *Id.* at 17-19.

[29] Under the original provision of Section 21(1) of R.A. No. 9165, after seizure and confiscation of the drugs, the apprehending team was required to immediately conduct a physical inventory and to photograph the same in the presence of (1) the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, (2) a representative from the media and (3) the DOJ, and (4) any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof. As amended by R.A. No. 10640, it is now mandated that the conduct of physical inventory and photograph of the seized items must be in the presence of (1) the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, (2) with an elected public official and (3) a representative of the National Prosecution Service or the media who shall sign the copies of the inventory and be given a copy thereof (See *People v. Ocampo*, G.R. No. 232300, August, 2018; *People v. Allingag*, G.R. No. 233477, July 30, 2018; *People v. Vicente Sipin y De Castro*, *supra* note 18; *People v. Reyes*, G.R. No. 219953, April 23, 2018; and *People v. Mola*, *supra* note 26).

[30] *Supra* note 18.

[31] See also *People v. Reyes*, *supra* note 29 and *People v. Mota*, *supra* note 26.

[32] *People v. Vicente Sipin y De Castro*, *supra* note 18. See also *People v. Reyes*, *supra* note 29. and *People v. Mola*, *supra* note 26.

[33] G.R. No. 233744, February 28, 2018. (Citations omitted).

[34] See also *People v. Crespo*, G.R. No. 230065, March 14, 2018 and *People v. Sanchez*, G.R. No. 231383, March 7, 2018. (Emphasis and underscoring supplied)

[35] TSN, June 2, 2011, p.19.

[36] TSN, August 5, 2011, p. 13.

[37] *Id.* at 15.

[38] *Id.* at 14-15.

[39] See *People v. Alvarado*, G.R. No. 234048, April 23, 2018 and *People v. Saragena*, G.R. No. 210677, August 23, 2017.

[40] SEC. 5. *When warrant of arrest may issue.* -(a) *By the Regional Trial Court.* -Within ten (10) days from the filing of the complaint or information, the judge shall personally evaluate the resolution of the prosecutor and its supporting evidence. He may immediately dismiss the case if the evidence on record clearly fails to establish probable cause. If he finds probable cause, he shall issue a warrant of arrest, or a commitment order if the accused has already been arrested pursuant to a warrant issued by the judge who conducted the preliminary investigation or when the complaint or information was filed pursuant to Section 6 of this Rule. In case of

doubt on the existence of probable cause, the judge may order the prosecutor to present additional evidence within five (5) days from notice and the issue must be resolved by the court within thirty (30) days from the filing of the complaint of information.

CONCURRING OPINION

LEONEN, J.:

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

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

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

I

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

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

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

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

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

We ruled in *People v. Ganguso*:

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

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

II

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

In actions involving the illegal sale of dangerous drugs, the following elements must first be established: (1) proof that the transaction or sale took place and (2) the presentation in court of the *corpus delicti* or the illicit drug as evidence.^[2] (Emphasis in the original, citation omitted)

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

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

- (1) *The apprehending team having initial custody and control of the dangerous drugs, controlled precursors and essential chemicals, instruments/paraphernalia and/or laboratory equipment shall, immediately after seizure and confiscation, conduct a physical inventory of the seized items and photograph the same **in the presence** of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, **with an elected public official and a representative of the National Prosecution Service or tile media** who shall be required to sign the copies of the inventory and be given a copy thereof Provided, That the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures: Provided, finally, That noncompliance of these requirements **under justifiable grounds**, as*

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

- (2) Within twenty-four (24) hours upon confiscation/seizure of dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment, the same shall be submitted to the PDEA Forensic Laboratory for a qualitative and quantitative examination;
- (3) A certification of the forensic laboratory examination results, which shall be done by the forensic laboratory examiner, shall be issued immediately upon the receipt of the subject item/s: *Provided*, That when the volume of dangerous drugs, plant sources of dangerous drugs, and controlled precursors and essential chemicals does not allow the completion of testing within the time frame, a partial laboratory examination report shall be provisionally issued stating therein the quantities of dangerous drugs still to be examined by the forensic laboratory: *Provided*, however, That a final certification shall be issued immediately upon completion of the said examination and certification[.] (Emphasis supplied)

People v. Nandi^[3] thus, summarized that four (4) links "should be established in the chain of custody of the confiscated item: *first*, the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; *second*, the turnover of the illegal drug seized by the apprehending officer to the investigating officer; *third*, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and *fourth*, the turnover and submission of the marked illegal drug seized from the forensic chemist to the court."^[4]

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

Compliance with Section 21's chain of custody requirements ensures the integrity of the seized items. Conversely, non-compliance with it tarnishes the credibility of the *corpus delicti* around which prosecutions under the Comprehensive Dangerous Drugs Act revolve. Consequently, they also tarnish the very claim that an offense against the Comprehensive Dangerous Drugs Act was committed.

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

A unique characteristic of narcotic substances is that they are not readily identifiable as in fact they are subject to scientific analysis to determine their composition and nature. The Court cannot reluctantly close its eyes to the likelihood, or at least the possibility, that at any of the links in the chain of custody over the same there could have been tampering, alteration or substitution of substances from

other cases by accident or otherwise - in which similar evidence was seized or in which similar evidence was submitted for laboratory testing. Hence, in authenticating the same, *a standard more stringent than that applied to cases involving objects which are readily identifiable must be applied*, a more exacting standard that entails a chain of custody of the item with sufficient completeness if only to render it improbable that the original item has either been exchanged with another or been contaminated or tampered with.^[9] (Emphasis supplied)

People v. Holgado, et al.,^[10] recognized that:

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

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

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

III

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

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

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

performance of official duty.

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

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

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

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

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

....

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

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

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

A review of jurisprudence, even prior to the passage of the R.A. No. 9165, shows that this Court did not hesitate to strike down convictions for failure to follow the proper procedure for the custody of confiscated dangerous drugs. Prior to R.A. No.

9165, the Court applied the procedure required by Dangerous Drugs Board Regulation No. 3, Series of 1979 amending Board Regulation No. 7, Series of 1974.

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

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

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

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

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

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

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

IV

The precision required in the custody of seized drugs and drug paraphernalia is affirmed by the

amendments made to Section 21 by Republic Act No. 10640.

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

Republic Act No. 9165	Republic Act No . 10640
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.	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:	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 <i>drugs</i> shall, immediately after seizure and confiscation, <i>physically inventory</i> 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;	(1) The apprehending team having initial custody and control of the <i>dangerous drugs, controlled precursors and essential chemicals, instruments/paraphernalia and/or laboratory equipment</i> shall, immediately after seizure and confiscation, <i>conduct a physical inventory of the seized items</i> 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, <i>with an elected public official and a representative of the National Prosecution Service <u>or</u> the media</i> 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 police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizure;
	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

Section 21(1) was simultaneously relaxed and made more specific by Republic Act No. 10640.

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

First, a representative from the media;

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

Third, any elected public official.

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

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

Provided, That the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures. (Emphasis supplied)

Lescano v. People^[23] summarizes Section 21(1)'s requirements:

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

Moreover, Section 21(1) requires at least three (3) persons to be present during the physical inventory and photographing. These persons are: first, the accused or the person/s from whom the items were seized; second, an elected public official; and third, a representative of the National Prosecution Service. There are, however, alternatives to the first and the third. As to the first (i.e., the accused or the person/s from whom items were seized), there are two (2) alternatives: first, his or her representative; and second, his or her counsel. As to the representative of the National Prosecution Service, a representative of the media may be present in his or her place.^[24]

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

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

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

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

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

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

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

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

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

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

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

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

Q Where did he conduct the inventory?

A *At our office*.

Q Where?

A *At the PDEA Office*, sir.

Q ... How did you know that?

A Because I was there sir, during the inventory.

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

A He put a marking.

Q How did you know?

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

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

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

A He made an inventory.

Q How about the marking?

A He made markings on it.

Q How did you know?

A I supervised them.

Q And where did Agent Orellan made the inventory?

A *In the office.*^[28] (Emphasis supplied)

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

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

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

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

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

Court:

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

A *Yes, Your Honor.*

Court:

No pictures at the house of the accused?

A *None, Your Honor.*^[30] (Emphasis supplied)

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

. . . .

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

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

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

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

"in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official

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

"who shall be required to sign the copies of the inventory and be given a copy thereof"

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

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

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

A The accused did not sign, Sir.

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

A Yes, Sir.

Q Also from the media?

A None, Sir.

Q Also by an elected official?

A None, Sir.^[35]

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

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

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

inventoried.

The prosecution's case could have benefitted from the presence of the third-party witnesses required by Section 21(1) of the Comprehensive Dangerous Drugs Act. Indeed, the requirement that the inventory and photographing be done "immediately after the seizure and confiscation" necessarily means that the required witnesses must also be present during the seizure or confiscation. *People v. Mendoza*^[37] confirms this and characterized the presence of these witnesses as an "insulating presence [against] the evils of switching, 'planting' or contamination ":[38]

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

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

The Court should not lose sight of how accused-appellant's apprehension was supposedly occasioned by a buy-bust operation. This operation was allegedly prompted by anterior information supplied by an unidentified confidential informant.^[40] Acting on the information, Regional Director Lt. Col. Edwin Layese supposedly organized a ten-person buy-bust team^[41] and briefed them on the operation. Thereafter, the team claims to have managed to prepare the P500.00 bill buy-bust money, a Coordination Form, and other documents.^[42] All these happened from the time they were informed by their confidential informant at 8:00pm up to the time they were dispatched for the operation at around 9:45 pm.^[43]

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

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

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

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

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

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

Q You know Forensic Chemist Charity Peralta Caceres?

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

Q Usually you have not seen her?

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

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

A Only the receiving clerk, Sir.

Q Not personally Caceres?

A No, Sir.

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

A I went back to our office, Sir.

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

A I don't know, Sir.^[44]

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

This break in the chain of custody opens up the possibility of substitution, alteration, or tampering of the seized drugs during the turn over to the chemist, especially since the amount was as little as 0.02 grams. Thus, the illegal drugs tested by the chemist may not be the same items allegedly seized by the buy-bust team from accused-appellant. The doubt that the break created should have been enough to acquit accused-appellant.

VI

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

Provided, finally, That noncompliance of these requirements *under justifiable grounds*, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures and custody over said items. (Emphasis supplied)

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

Provided, further, that non-compliance with these requirements *under justifiable grounds*, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items[.] (Emphasis supplied)

To sanction non-compliance, two requisites must be satisfied. First, the prosecution must identify and prove "justifiable grounds." Second, it must show that, despite non-compliance, the integrity and evidentiary value of the seized items were properly preserved. To satisfy the

second requirement, the prosecution must establish that positive steps were observed to ensure such preservation. The prosecution cannot rely on broad justifications and sweeping guarantees that the integrity and evidentiary value of seized items were preserved.

The prosecution presented the following reasons of the buy-bust team as "justifiable grounds" why they failed to have the required witnesses present during their operation: First, the operation was conducted late at night; Second, it was raining during their operation; Third, it was unsafe for the team "to wait at Lim's house "[46]; Fourth, they exerted effort to contact the barangay officials and a media representative to no avail.[47] The Ponencia added that "[t]he time constraints and the urgency of the police action understandably prevented the law enforcers from ensuring the attendance of the required witnesses, who were not improbably at a more pressing engagement when their presence was requested. "[48] According to the Ponencia, "there was no genuine and sufficient attempt to comply with the law. "[49]

I join Justice Diosdado Peralta m finding these explanations inadequate.

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

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

. . . .

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

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

Q Why?

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

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

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

Third, the buy-bust team did not specifically state the kind of effort they made in trying to contact the required witnesses. A general statement that they exerted earnest effort to coordinate with them is not enough. They should narrate the steps they carried out in getting the presence of a Department of Justice representative, a media representative, and an elected official. Otherwise, it will be easy to abuse non-compliance with Section 21(1) since a sweeping statement of "earnest effort" is enough justify non-compliance.

Fourth, the prosecution failed to state the basis why the buy-bust team felt "unsafe" in waiting for the representatives in Lim's house. To reiterate, they were composed of at least ten members. They outnumber the two accused, who were the only persons in the house. They

were able to control the accused's movement when they ordered them "to put their hands on their heads and to squat on the floor."^[52] Moreover, when frisked, the agents did not find any concealed weapon in the body of the two accused. How the PDEA agents could have felt "unsafe" in this situation is questionable, at the very least.

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

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

VII

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

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

At stake are some of the most sacrosanct pillars of our constitutional order and justice system: due process, the right to be presumed innocent, the threshold of proof beyond reasonable doubt and the duty of the prosecution to build its case upon its own merits. We cannot let these ideals fall by the wayside, jettisoned in favor of considerations of convenience and to facilitate piecemeal convictions for ostensible wrongdoing.

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

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

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

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

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

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

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

[6] Id. at 229.

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

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

[9] Id. at 588-589.

[10] 741 Phil. 8 (2014) [Per J. Leonen, Third Division].

[11] Id. at 93.

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

[13] Id. at 403.

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

[15] Id. at 311.

[16] Id.

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

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

[19] 588 Phil. 95 (2008) [Per J. Tinga, Second Division].

[20] Id. at 405.

[21] Id at 403-406.

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

[23] 778 Phil. 60 (2016) [Per J. Leonen, Second Division].

[24] Id. at 475.

[25] The buy-bust operation was conducted in 2010.

[26] TSN dated June 2, 2011, pp. 17-18.

- [27] TSN dated July 22, 2011, pp. 10-12.
- [28] TSN dated August 5, 2011, p.13.
- [29] RTC records (Crim. Case No. 2010-1073), p. 5, Affidavit of Arresting Officer.
- [30] TSN dated June 2, 2011, pp. 21-30.
- [31] TSN dated July 22, 2011, pp. 10-12.
- [32] TSN dated August 5, 2011, p. 13.
- [33] RTC records (Crim. Case No. 2010-1073), p. 18, and RTC records (Crim. Case No. 2010-1074), p. 16.
- [34] TSN dated August 5, 2011, p. 17.
- [35] TSN dated June 2, 2011, pp. 28-29.
- [36] 639 Phil. 134, 144 (2010) [Per J. Mendoza, Second Division].
- [37] *People v. Mendoza*, 736 Phil. 749 (2014) [Per J. Bersamin, First Division].
- [38] *Id.* at 764.
- [39] *Id.*
- [40] *Ponencia*, p. 3.
- [41] *Id.*; TSN dated June 2, 2011, p. 8. In Officer Orellan's testimony, he stated that aside from himself, the buy-bust team was composed of "Regional Director Layese, Deputy Director Atila, ... IO1 Carin, IO2 Alfaro, IO1 Genita , IO1 Avila, IO2 Orcales, IA2 Pica , IO1 Cardona[.]"
- [42] *Id.*
- [43] *Id.*
- [44] TSN dated June 2, 2011, pp. 36-37.
- [45] TSN dated August 5, 2011, p.16.
- [46] *Ponencia*, p. 14.
- [47] *Id.*
- [48] *Id.*
- [49] *Id.*
- [50] TSN dated August 5, 2011, pp. 14-15.

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

[52] *Ponencia*, p. 3.

[53] J. Caguioa's Reflections, p. 2.

SEPARATE CONCURRING OPINION

CAGUIOA, J.:

I concur.

I agree with the *ponencia* that accused-appellant Romy Lim y Miranda (Lim) should be acquitted for failure of the prosecution to establish an unbroken link in the chain of custody of the dangerous drugs supposedly seized from him.

The facts are simple:

On October 19, 2010, at around 8:00 p.m., Intelligence Officer 1 Albert Orellan (IO1 Orellan) and his team were at the Regional Office of the Philippine Drug Enforcement Agency (PDEA) when they received information from a confidential informant (CI) that Lim had engaged in the sale of prohibited drugs in his house at Zone 7, Cabina, Bonbon, Cagayan de Oro City. The team immediately prepared to conduct a buy-bust operation and coordinated with the nearest police station. They then left to conduct the buy-bust operation and reached the target area at around 10:00 p.m., or two hours after they received the information from the CI.

Upon reaching the target area, the poseur-buyer and the CI knocked at the door of Lim's house. Eldie Gorres (Gorres), Lim's stepson, came out and invited them to enter. Inside the house, Lim was sitting on the sofa while watching the television while the supposed sale of *shabu* happened between Gorres and the poseur-buyer. After the supposed consummation of the sale, the police officers barged into the house and arrested Lim and Gorres. The two were then prosecuted for violation of Sections 5 and 11, Article II of Republic Act No. (R.A.) 9165.

At the outset, it is important to stress that jurisprudence is well-settled that in all prosecutions for violation of R.A. 9165, the following elements must be proven beyond reasonable doubt: (1) proof that the transaction took place; and (2) presentation in court of the *corpus delicti* or the illicit drug as evidence. The existence of dangerous drugs is a condition *sine qua non* for conviction for the illegal sale and possession of dangerous drugs, they being the very *corpus delicti* of the crimes.^[1] What is material is the proof that the transaction or sale transpired, coupled with the presentation in court of the *corpus delicti*.^[2] *Corpus delicti* is the body or substance of the crime, and establishes the fact that a crime has been actually committed.^[3]

In dangerous drugs cases, it is essential in establishing the *corpus delicti* that the procedure provided in Section 21 of R.A. 9165 is followed. The said section provides:

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;
- (2) Within twenty-four (24) hours upon confiscation/seizure of dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment, the same shall be submitted to the PDEA Forensic Laboratory for a qualitative and quantitative examination;
- (3) A certification of the forensic laboratory examination results, which shall be done under oath by the forensic laboratory examiner, shall be issued within twenty-four (24) hours after the receipt of the subject item/s: *Provided*, That when the volume of the dangerous drugs, plant sources of dangerous drugs, and controlled precursors and essential chemicals does not allow the completion of testing within the time frame, a partial laboratory examination report shall be provisionally issued stating therein the quantities of dangerous drugs still to be examined by the forensic laboratory: *Provided, however*, That a final certification shall be issued on the completed forensic laboratory examination on the same within the next twenty-four (24) hours[.]

Furthermore, Section 21(a), Article II of the Implementing Rules and Regulations of R.A. 9165 (IRR) filled in the details as to where the physical inventory and photographing of the seized items could be done: *i.e.*, at the place of seizure, at the nearest police station or at the nearest office of the apprehending officer/team, thus:

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

- (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[.] (Emphasis supplied)

Section 21 plainly requires the apprehending team to conduct a physical inventory of the seized items and photograph the same immediately after seizure and confiscation in the presence of the accused, with (1) an elected public official, (2) a representative of the Department of Justice (DOJ), and (3) a representative of the media, all of whom shall be required to sign the copies of

the inventory and be given a copy thereof.

In buy-bust situations, or warrantless arrests, the physical inventory and photographing are allowed to be done at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable. But even in these alternative places, such inventory and photographing are still required to be done in the presence of the accused and the aforementioned witnesses.

I submit 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. And only if this is not practicable can the inventory and photographing then be done as soon as the apprehending team reaches the nearest police station or the nearest office. There can be no other meaning to the plain import of this requirement. By the same token, however, this also means that the 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 activity. Simply put, the apprehending team has enough time and opportunity to bring with them said witnesses.

In other words, while the physical inventory and photographing are allowed to be done "at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures," this does not dispense with the requirement of having all the required witnesses to be physically present at the time or near the place of apprehension. The reason is simple, it is at the time of arrest - or at the time of the drugs' "seizure and confiscation" - that the presence of the three witnesses is most needed, **as it is their presence at the time of seizure and confiscation that would insulate against the police practice of planting evidence.**

The presence of the witnesses at the place and time of arrest and seizure is required because "[w]hile buy-bust operations deserve judicial sanction if carried out with due regard for constitutional and legal safeguards, it is well to recall that x x x by the very nature of anti-narcotics operations, the need for entrapment procedures x x x the ease with which sticks of marijuana or grams of heroin can be planted in pockets of or hands of unsuspecting provincial hicks, and the secrecy that inevitably shrouds all drug deals, the possibility of abuse is great."^[4]

In this connection, it is well to point out that recent jurisprudence is clear that the **procedure enshrined in Section 21 of R.A. 9165 is a matter of substantive law**, and cannot be brushed aside as a simple procedural technicality; or worse, ignored as an impediment to the conviction of illegal drug suspects.^[5] For indeed, however noble the purpose or necessary the exigencies of our campaign against illegal drugs may be, it is still a governmental action that must always be executed within the boundaries of law.

Using the language of the Court in *People v. Mendoza*,^[6] 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 R.A. 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 sachets that were evidence of the *corpus delicti*, and thus adversely affected the trustworthiness of the incrimination of the accused.^[7]

Thus, it is compliance with this most fundamental requirement - the presence of the "insulating" witnesses - that the pernicious practice of planting of evidence is greatly minimized if not foreclosed altogether. Stated otherwise, this is the first and foremost requirement provided by Section 21 to ensure the preservation of the "integrity and evidentiary value of the seized drugs" in a buy-bust situation whose nature, as already explained, is that it is a planned operation.

To reiterate, 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."**

The practice of police operatives of not bringing to the intended place of arrest the representative of the DOJ, the media representative, and the elected public official, when they could easily do so - and "calling them in" to the police station 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. I thuenourage the Court to send a strong message that faithful compliance with this most important requirement bringing them to a place near the intended place of arrest - should be strictly complied with.

In this regard, showing how the drugs transferred hands from the accused to the poseur-buyer, from the poseur-buyer to the investigator and from the investigator to the crime laboratory - much like in this case - without showing compliance with the inventory and photographing as witnessed by the three required witnesses is not enough to ensure the integrity of the seized drugs. Indeed, without such witnessing, the drugs could already have been planted - and the marking, and the transfer from one to another (as usually testified to by the apprehending officers) only proves the chain of custody of **planted** drugs.

I am not unaware that there is now a saving clause in Section 21, introduced by R.A. 10640, which is the portion that states: "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."

The requirements referred to that need not be complied with if there are justifiable grounds are only in respect of the conduct of the physical inventory and the photographing in the presence of the accused, with an elected public official, and a representative of the DOJ, and the media who shall be required to sign the copies of the inventory and be given a copy thereof.

Again, the plain language of this last proviso in Section 21 of R.A. 10640 simply means that the failure of the apprehending officer/team to physically inventory and photograph the drugs at the place of arrest and/or to have the DOJ or media representative and elected public official witness the same can be excused (*i.e.*, these shall not render void and invalid such seizures and custody over said items) so long as there are justifiable grounds for not complying with these requirements **and** "as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team."

Thus, it has been held that, as a general rule, strict compliance with the requirements of Section 21 is mandatory.^[8] The Court may allow noncompliance with the requirement only in exceptional cases,^[9] where the following requisites are present: (1) the existence of justifiable grounds to allow departure from the rule on strict compliance; and (2) the integrity and the evidentiary value of the seized items are properly preserved by the apprehending team.^[10] If these two elements are present, the seizures and custody over the confiscated items shall not be rendered void and invalid.

It has also been emphasized that for the saving clause to be triggered, the prosecution must first recognize any lapses on the part of the police officers and justify the same.^[11] Breaches of the procedure contained in Section 21 committed by the police officers, left unacknowledged and unexplained by the State, militate against a finding of guilt beyond reasonable doubt against the accused as the integrity and evidentiary value of the *corpus delicti* had been compromised.^[12]

In cases involving procedural lapses of the police officers, proving the identity of the *corpus delicti* despite noncompliance with Section 21 requires the saving clause to be successfully triggered.

For this purpose, the prosecution must satisfy its two-pronged requirement: first, credibly justify the noncompliance, and second, show that the integrity and evidentiary value of the seized item were properly preserved.^[13] This interpretation on when the saving clause is triggered is not novel. In *Valencia v. People*,^[14] the Court held:

Although the Court has ruled that non-compliance with the directives of Section 21, Article II of R.A. No. 9165 is not necessarily fatal to the prosecution's case, the prosecution must still prove that (a) there is a justifiable ground for the non-compliance, and (b) the integrity and evidentiary value of the seized items were properly preserved. Further, the non-compliance with the procedures must be justified by the State's agents themselves. The arresting officers are under obligation, should they be unable to comply with the procedures laid down under Section 21, Article II of R.A. No. 9165, to explain why the procedure was not followed and prove that the reason provided a justifiable ground. Otherwise, the requisites under the law would merely be fancy ornaments that may or may not be disregarded by the arresting officers at their own convenience.^[15] (Citations omitted)

In the case of *People v. Barte*,^[16] the Court pronounced that the State has the duty to credibly explain the noncompliance of the provisions of Section 21:

When there is failure to comply with the requirements for proving the chain of custody in the confiscation of contraband in a drug buy-bust operation, the State has the obligation to credibly explain such noncompliance; otherwise, the proof of the *corpus delicti* is doubtful, and the accused should be acquitted for failure to establish his guilt beyond reasonable doubt.^[17]

In *People v. Ismael*,^[18] the accused was acquitted because "the prosecution failed to: (1) overcome the presumption of innocence which appellant enjoys; (2) prove the *corpus delicti* of the crime; (3) establish an unbroken chain of custody of the seized drugs; and (4) offer any explanation why the provisions of Section 21, RA 9165 were not complied with."^[19]

Likewise, in *People v. Reyes*^[20]:

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 noncompliance 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^[21] (Emphasis supplied; citations omitted)

Conformably with these disquisitions, I thus express my full support over the institution by the *ponencia* of the following mandatory policies before a case for violation of R.A. 9165, as amended by R.A. 10640, may be filed:

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.^[22]

To my mind, the Court, through the said policies, actually achieves two laudable objectives, namely: (1) ensuring that the cases filed before the courts are not poorly prepared, thus ultimately leading to the decongestion of court dockets, and (2) further protection of the citizens from fabricated suits.

In connection with the case at hand, I therefore fully concur with the *ponencia* as it acquits Lim of the crime charged. In particular, I wholly agree with the *ponencia* as it holds that the explanations put forth by the apprehending team -that it was late at night, it was raining, and that there were simply no available elected official and representatives from the media and DOJ despite their **unsubstantiated** claim that they exerted efforts to contact them - are simply unacceptable.

As the *ponencia* itself pointed out, "[i]t must be alleged and proved that the presence of the three witnesses to the physical inventory and photograph of the illegal drug seized was not obtained due to reason/s such as:"^[23]

(1) their attendance was impossible because the place of arrest was a remote area; (2) their safety during the inventory and photograph of the seized drugs was threatened by an immediate retaliatory action of the accused or any person/s acting for and in his/her behalf; (3) the elected official themselves were involved in the punishable acts sought to be apprehended; (4) earnest efforts to secure the presence of a DOJ or media representative and an elected public official within the period required under Article 125 of the Revised Penal Code prove futile through no fault of the arresting officers, who face the threat of being charged with arbitrary detention; or (5) time constraints and urgency of the anti-drug operations, which often rely on tips of confidential assets, prevented the law enforcers from obtaining the presence of the required witnesses even before the offenders could escape.^[24]

Verily, none of the above reasons - or any such justifications similar to the aforementioned - was present in this case.

It is important to note that (1) the report of the CI came in around 8:00 p.m.; (2) the police officers immediately arranged a buy-bust operation; and (3) they arrived at Lim's house at about 15 minutes before 10:00 p.m. While the vigor exerted by the police officers was commendable, it must be pointed out that Lim was supposedly selling drugs **at his house**. In fact, Lim "was sitting on the sofa while watching the television" when the CI and the poseur-buyer arrived. There was thus no issue with regard to urgency and time constraints, as Lim was not a flight risk nor was his supposed commission of the crime bound to a limited period of time. To reiterate, Lim was supposedly **continuously** committing the crime **at his own**

residence. The police officers could have, for instance, proceeded with the operation the following day when the presence of the three witnesses - as required by law - could have been obtained.

At this point, it is imperative to discuss that the presumption of regularity in the performance of duties by the police officers could not justify the police officers' noncompliance with the requirements of law. Verily, the said presumption could not supply the acts which were not done by the police officers. The presumption of regularity in the performance of duties is simply that - a presumption - which can be overturned if evidence is presented to prove that the public officers were not properly performing their duty or they were inspired by improper motive.^[25] It is not uncommon, therefore that cases will rely on the presumption when there is no showing of improper motive on the part of the police.

To my mind, however, notwithstanding a lack of showing of improper motive, the presumption of regularity of performance of official duty stands only when no reason exists in the records by which to doubt the regularity of the performance of official duty.^[26] As applied to drugs cases, I believe that the presumption shall only arise when there is a showing that the apprehending officer/team followed the requirements of Section 21, or when the saving clause is successfully triggered.

Judicial reliance on the presumption of regularity in the performance of official duty despite the lapses in the procedures undertaken by the agents of the law is fundamentally unsound because the lapses themselves are affirmative proofs of irregularity.^[27] In *People v. Enriquez*,^[28] the Court held:

x x x [A]ny 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*.^[29] (Emphasis supplied)

Thus, in case of noncompliance with Section 21, the Court cannot rely on the presumption of regularity to say that the guilt of the accused was established beyond reasonable doubt. The discussion in *People v. Sanchez*^[30] is instructive:

The court apparently banked also on the presumption of regularity in the performance that a police officer like SPO2 Sevilla enjoys in the absence of any taint of irregularity and of ill motive that would induce him to falsify his testimony. Admittedly, the defense did not adduce any evidence showing that SPO2 Sevilla had any motive to falsify. The regularity of the performance of his duties, however, leaves much to be desired given the lapses in his handling of the allegedly confiscated drugs as heretofore shown.

An effect of this lapse, as we held in *Lopez v. People*, is to negate the presumption that official duties have been regularly performed by the police officers. Any taint of irregularity affects the whole performance and should make the presumption unavailable. There can be no ifs and buts regarding this consequence considering the effect of the evidentiary presumption of regularity on the constitutional presumption of innocence.^[31] (Citation omitted)

What further militates against according the police the presumption of regularity is the fact that even the pertinent internal guidelines of the police (some as early as 1999, predating R.A. 9165) require photographing and inventory during the conduct of a buy-bust operation.

Under the 1999 Philippine National Police Drug Enforcement Manual^[32] (PNPDEM), the conduct of buy-bust operations requires the following:

ANTI-DRUG OPERATIONAL PROCEDURES

X X X X

V. SPECIFIC RULES

X X XX

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:

- a. Record time of jump-off in unit's logbook;
- b. Alertness and security shall at all times be observed[;]
- c. Actual and timely coordination with the nearest PNP territorial units must be made;
- d. Area security and dragnet or pursuit operation must be provided[;]
- e. Use of necessary and reasonable force only in case of suspect's resistance:
- f. If buy-bust money is dusted with ultra violet powder make sure that suspect get hold of the same and his palm/s contaminated with the powder before giving the pre-arranged signal and arresting the suspects;
- g. In pre-positioning of the team members, the designated arresting elements must clearly and actually observe the negotiation/transaction between suspect and the poseur-buyer;
- h. Arrest suspect in a defensive manner anticipating possible resistance with the use of deadly weapons which maybe concealed in his body, vehicle or in a place within arms['] reach;
- i. After lawful arrest, search the body and vehicle, if any, of the suspect for other concealed evidence or deadly weapon;
- j. Appraise suspect of his constitutional rights loudly and clearly after having been secured with handcuffs;
- 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. (Emphasis and underscoring supplied)

Chapter 4, Rule 37 of the 2013 Revised Philippine National Police (PNP) Operational Procedures^[33] applicable during the pre-amendment of Section 21 provides:

37.3 Handling, Custody and Disposition of Evidence

- a. In the handling, custody and disposition of evidence, the provision of Section 21, RA 9165 and its IRR shall be strictly observed.
- b. 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 persons 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.
- c. 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, 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.
- d. Photographs of the pieces of evidence must be taken upon discovery without moving or altering its position in the place where it was 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. (Emphasis and underscoring supplied)

Further, the Revised PNP Manual on Anti-Illegal Drugs Operation and Investigation^[34] (2014 AIDSOTF Manual) similarly requires strict compliance with the provisions:

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, Art II, RA 9165, as amended by RA 10640.

XXXX

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.
- 4) **If procedures during the inventory were not properly observed, as stipulated in Section 21, RA 9165 as amended by RA 10640, law enforcers must make a justification in writing for non-observance of the same to prove that the integrity and evidentiary value of the seized items are not tainted.** (Emphasis and underscoring supplied)

Under Sections Section 3-1(3.1)(b)(6) and (3.1)(b)(7) of the 2014 AIDSOTF Manual, **strict** compliance is similarly demanded from police officers, thus:

- 6) During the actual physical inventory, the Seizing Officer must mark, and photograph the seized/recovered pieces of evidence in accordance with the provision of Section 21 of RA 9165 as amended by RA 10640 in the presence of:
 - (a) The suspect or 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.

(Note: The presence of the above-mentioned witnesses shall only be required during the physical inventory of the confiscated items. If in case, witnesses mentioned above are absent, same should be recorded in the report.
- 7) In warrantless searches and seizures like buy-bust operations, the inventory and taking of photographs shall be made at the nearest Police Station or Office of the

Apprehending Officer or Team whichever is practicable, however, concerned police personnel must execute a written explanation to justify, non-compliance of the prescribed rules on inventory under Section 21, RA 9165 as amended by RA 10640. x x x (Emphasis and underscoring supplied)

The Court has ruled in *People v. Zheng Bai Hui* ^[35] that it will not presume to set an *a priori* basis of what detailed acts police authorities might credibly undertake and carry out in their entrapment operations. However, given the police operational procedures, it strains credulity why the police officers could not have (1) ensured the presence of the required witnesses, or at the very least (2) marked, photographed, and physically inventoried the seized items pursuant to the provisions of their own operational procedures.^[36]

To my mind, therefore, while no *a priori* basis for the conduct of a valid buy-bust operation is set, **the noncompliance of the police with their own procedures** implicates (1) the operation of the saving clause and (2) the appreciation of the presumption of regularity.

With this in mind, anything short of observance and compliance by the PDEA and police authorities with the positive requirements of the law, and even with their own internal procedures, means that they have not performed their duties. If they did, then it would not be difficult for the prosecution to acknowledge the lapses and justify the same - it needs merely to present the justification in writing required to be executed by the police under Sections 2-6(2.33)(a)(4) and 3-1(3.1)(b)(7) of the 2014 AIDSOTF Manual. After which, the court can proceed to determine whether the prosecution had credibly explained the noncompliance so as to comply with the first prong of the saving mechanism. I submit that without a justification being offered, the finding that the integrity and probative weight of the seized items are preserved can only satisfy the second prong and will not trigger the saving clause.

It then becomes error to fill the lacuna in the prosecution's evidence with the presumption of regularity, when there clearly is no established fact from which the presumption may arise. As such, the evidence of the State has not overturned the presumption of innocence in favor of the accused.^[37]

Based on these premises, I vote to **GRANT** the instant appeal and **REVERSE** and **SET ASIDE** the Decision of the Court of Appeals dated February 23, 2017 finding accused-appellant Romy Lim y Miranda guilty beyond reasonable doubt of violating Sections 5 and 11, Article II of Republic Act No. 9165.

^[1] *People v. Magat*, 588 Phil. 395, 402 (2008).

^[2] *People v. Dumangay*, 581 Phil. 730, 739 (2008).

^[3] *Id.*

^[4] *People v. Santos, Jr.*, 562 Phil. 458, 471 (2007).

^[5] *People v. Crispo*, G.R. No. 230065, March 14, 2018, p. 11; *People v. Ana*, G.R. No. 230070, March 14, 2018, p. 7; *People v. Lumaya*, G.R. No. 231983, March 7, 2018, p. 12; *People v. Ramos*, G.R. No. 233744, February 28, 2018, p. 9; *People v. Manansala*, G.R. No. 229092, February 21, 2018, p. 9; *People v. Guieb*, G.R. No. 233100, February 14, 2018, p. 9; *People v. Paz*, G.R. No. 229512, January 31, 2018, p. 11; *People v. Miranda*, G.R. No. 229671, January 31, 2018, p. 11; *People v. Jugo*, G.R. No. 231792, January 29, 2018, p. 9; *People v. Mamangon*, G.R. No. 229102, January 29, 2018, p. 9; *People v. Calibod*, G.R. No. 230230, November 20,

2017, p. 9; *People v. Ching*, G.R. No. 223556, October 9, 2017, p. 10; *People v. Geronimo*, G.R. No. 225500, September 11, 2017, p. 9; *People v. Macapundag*, G.R. No. 225965, March 13, 2017, 820 SCRA 204, 215; *Gamboa v. People*, 799 Phil. 584, 597 (2016); see also *People v. Dela Victoria*, G.R. No. 233325, April 16, 2018, p. 10; *People v. Bintaib*, G.R. No. 217805, April 2, 2018; *People v. Segundo*, G.R. No. 205614, July 26, 2017, p. 17.

[6] 736 Phil. 749 (2014).

[7] *Id.* at 764.

[8] See *People v. Cayas*, 789 Phil. 70,79 (2016); *People v. Havana*, 776 Phil. 462,475 (2016).

[9] See *id.* at 80.

[10] R.A. 9165, Sec. 21(1), as amended by R.A. 10640.

[11] See *People v. Alagarme*, 754 Phil. 449,461 (2015).

[12] See *People v. Sumili*, 753 Phil. 343, 352 (2015).

[13] See *People v. Capuno*, 655 Phil.226, 240-241 (2011); *People v. Garcia*, 599 Phil.416, 432-433 (2009); *People v. Reyes*, G.R. No. 199271, October 19, 2016, 806 SCRA 513, 536-537.

[14] 725 Phil. 268 (2014),

[15] *Id.* at 286.

[16] G.R. No. 179749, March 1, 2017, 819 SCRA 10.

[17] *Id.* at 13.

[18] G.R. No. 208093, February 20, 2017, 818 SCRA 122.

[19] *Id.* at 142; underscoring supplied.

[20] *Supra* note 13.

[21] *Id.* at 536.

[22] *Ponencia*, pp. 15-16.

[23] *Id.* at 13; emphasis omitted.

[24] *Id.*, citing *People v. Sipin*, G.R. No. 224290, June 11, 2018, p. 17.

[25] RULES OF COURT, Rule 131, Sec. 3(m) provides: "That official duty has been regularly performed."

[26] *People v. Mendoza*, *supra* note 6, at 770.

[27] *Id.*

[28] 718 Phil. 352 (2013).

[29] Id. at 366.

[30] 590 Phil. 214 (2008).

[31] Id. at 242 243.

[32] PNPM-D-0-3-1-99 [NG], the precursor anti-illegal drug operations manual prior to the 2010 and 2014 AIDSOTF Manual.

[33] PNP Handbook, PNPM-00-DS-3-2-13, December 2013.

[34] PNP Manual, PNPM-D-0-2-14 (DO), September 2014.

[35] 393 Phil. 68, 133 (2000).

[36] Note also that the same PNPDEM lays down the guidelines for preparation in buy-bust operations, including the preparation of inventory and photographing equipment, save only from the *a priori* basis consideration above.

[37] See *People v. Barte*, supra note 16, at 22.

ORDER OF RELEASE

**To: The Director General
Bureau of Corrections
1770 Muntinlupa City**

GREETINGS:

WHEREAS, the Supreme Court on September 4, 2018 promulgated a Decision in the above-entitled case, the dispositive portion of which reads:

"WHEREFORE, premises considered, the February 23, 2017 Decision of the Court of Appeals in CA-G.R. CR HC No. 01280-MIN, which affirmed the September 24, 2013 Decision of Regional Trial Court, Branch 25, Cagayan de Oro City, in Criminal Cases Nos. 2010-1073 and 2010-1074, finding accused- appellant Romy Limy Miranda guilty of violating Sections 11 and 5, respectively, of Article II of Republic Act No. 9165, is **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant Romy Lim y Miranda is **ACQUITTED** on 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 Davao Prison and Penal Farm, B.E. Dujali, Davao del Norte, for immediate implementation. The said Director is **ORDERED** to **REPORT** to this Court within five (5) days from receipt of this Decision the action he has taken.

Let copies of this Decision be furnished to the Secretary of the Department of

Justice, as well as to the Head/Chief of the National Prosecution Service, the Office of the Solicitor General, the Public Attorney's Office, the Philippine National Police, the Philippine Drug Enforcement Agency, the National Bureau of Investigation, and the Integrated Bar of the Philippines for their information and guidance. Likewise, the Office of the Court Administrator is **DIRECTED** to **DISSEMINATE** copies of this Decision to all trial courts, including the Court of Appeals.

SO ORDERED."

NOW, THEREFORE, you are hereby ordered to immediately release ROMY LIM y MIRANDA unless there are other causes for which he should be further detained, to make a return of this ORDER within five (5) days from notice with the certificate of your proceedings.

Given by the Honorable TERESITA J. LEONARDO-DE CASTRO, Chief Justice of the Supreme Court of the Philippines, this 4th day of September 2018.

Very truly yours,

EDGAR O. ARICHETA
Division Clerk of Court