

finding Alcantara and Cruz guilty beyond reasonable doubt of violating Sections 5 and 11, Article II of Republic Act No. (RA) 9165, otherwise known as “The Comprehensive Dangerous Drugs Act of 2002,”⁴ as amended.

The Facts

Two (2) Informations were filed against the accused-appellants in this case, along with other accused Ressurreccion R. Ressurreccion (Ressurreccion), Jonathan O. Manuel (Manuel), Aniceto G. Decena (Decena) and Jerry U. Robles (Robles), that read as follows:

Criminal Case No. 7140

That on or about the 2nd day of October, 2003, in the Municipality of San Mateo, Province of Rizal, Philippines and within the jurisdiction of the Honorable Court, the above-named accused, in conspiracy with one another, and acting as an organized or syndicated crime group for the purpose of gain, without being authorized by law, did then and there willfully, unlawfully and knowingly sell, deliver and give away to another person a total weight of 0.06 gram of white crystalline substance contained in three (3) heat-seated transparent plastic sachets, which gave positive result to the test for Methamphetamine Hydrochloride, a dangerous drug.

CONTRARY TO LAW.⁵

Criminal Case No. 7141

That on or about the 2nd day of October, 2003, in the Municipality of San Mateo, Province of Rizal, Philippines and within the jurisdiction of the Honorable Court, the above-named accused, in conspiracy with one another, and acting as an organized or syndicated crime group for the purpose of gain, without being authorized by law, did then and there willfully, unlawfully and knowingly have in their possession, direct custody and control a total weight of 1.02 grams of white crystalline substance contained in twenty-seven (27) heat-sealed transparent plastic-sachets and one (1) unsealed transparent plastic bag which gave positive result to the test for Methamphetamine Hydrochloride, a dangerous drug.

CONTRARY TO LAW.⁶

The prosecution alleged⁷ that at around 11:35 a.m. on October 2, 2003, PO1 Richie Gaerlan (PO1 Gaerlan), a member of the Anti-Illegal Drugs Special Operations Task Force of the Marikina City Police, was informed by an informant about an ongoing sale of *shabu* by alias Jonjon, later identified as Manuel, at Bangkaan St., Concepcion 1, Marikina City. The confidential informant told PO1 Gaerlan that he could introduce him to Manuel so he could buy *shabu* from the latter and PO1 Gaerlan would be able to arrest him.⁸

⁴ Titled “AN ACT INSTITUTING THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002, REPEALING REPUBLIC ACT NO. 6425, OTHERWISE KNOWN AS THE DANGEROUS DRUGS ACT OF 1972, AS AMENDED, PROVIDING FUNDS THEREFOR, AND FOR OTHER PURPOSES,” approved on June 7, 2002.

⁵ *Rollo*, p. 3.

⁶ *Id.*

⁷ See Appellee’s Brief dated March 13, 2014, CA *rollo*, pp.102-118.

⁸ TSN, March 11, 2004, p. 3.



PO1 Gaerlan immediately went to the place to verify the information relayed by the informant. When he arrived, there were several persons waiting for their turn to buy *shabu*. The informant then introduced PO1 Gaerlan to Manuel and told the latter that PO1 Gaerlan was a scorer of *shabu*. Manuel said that he ran out of stock, and then told PO1 Gaerlan and the informant to go to the house of a certain alias “*nanay*” in San Mateo, Rizal. After the said encounter, PO1 Gaerlan went back to his office and informed the Chief of Police, P/Sr Insp. Ramchrisen V. Haveria, about the arrangement with Manuel. Afterwards, they immediately coordinated with the Philippine Drug Enforcement Agency (PDEA), and they were given a reference control number which was NOC-0210-03-09. This reference control number was entered in the Pre-Operational Report dated October 2, 2003 prepared by the team who was to conduct the planned buy-bust operation later in the day.⁹

The team of PO1 Gaerlan then proceeded to prepare a plan to conduct a buy-bust-operation in San Mateo, Rizal. It was agreed that PO1 Gaerlan was the designated poseur-buyer and was then given three powder dusted one-hundred-peso bills bearing serial numbers D895476, BF333820, and FC154170¹⁰ In addition, they agreed that PO1 Gaerlan would remove his cap to signal that the sale had been consummated.¹¹ They then coordinated with the San Mateo Police Station, through a letter of coordination, for the conduct of the buy-bust operation. Three members of the San Mateo Police — SPO4 Ramon Cruz, PO2 Dionise Salcedo, and PO1 Pedro Avelino, Jr. joined the team of PO1 Gaerlan as backup.¹²

Shortly after, they proceeded with the informant to the house of alias “*nanay*” located in Sunnyville 5, Ampid at San Mateo, Rizal. Upon arrival, they noticed that several people were coming in and out of the said house. After briefly observing the place, PO1 Gaerlan and the informant approached the house.¹³

On their way, PO1 Gaerlan heard a male voice from inside the house who said “*Dalawang piso sa akin.*” At the gate, they were met by the doorman who asked them “*Magkano bibilhin ninyo?*” to which they answered “*Tres x x lang.*” The doorman was later identified as Cruz.¹⁴

After the doorman allowed them to enter the house, he then pointed them to an older woman, later identified as accused Ressurreccion, and PO1 Gaerlan and the informant approached her to give her the marked money. Ressurreccion told them to wait, and while they were waiting, PO1 Gaerlan noticed that there were several persons seated in front of a table who were repacking suspected *shabu*.¹⁵ Manuel was packing the suspected *shabu* inside

⁹ TSN, March 11, 2004, p. 3-4; CA rollo, p. 106.

¹⁰ TSN, April 20, 2004, p. 8.

¹¹ TSN, March 11, 2004, p. 10.

¹² TSN, March 11, 2004, p. 6-7; CA rollo, p. 106.

¹³ TSN, March 11, 2004, p. 7-8.

¹⁴ TSN, March 11, 2004, p. 8-9; CA rollo, p. 107.

¹⁵ TSN, March 11, 2004, p. 9-10.

sachets, accused Robles was cutting plastic sachets, Decena was heat sealing the plastic sachets using an improvised burner, and they would then pass all the packed suspected *shabu* to Alcantara.

Ressurreccion approached the table and put the marked money on the top of the table. Alcantara then gave Ressurreccion three plastic sachets containing suspected *shabu*. Ressurreccion, in turn, gave the plastic sachets to PO1 Gaerlan. PO1 Gaerlan then stepped outside and removed his bullcap to signal the consummation of the sale. Upon seeing this go-signal, the other police operatives rushed to the house but someone shouted “raid!” so PO1 Gaerlan immediately went back inside and arrested Ressurreccion. The other accused tried to escape but they were apprehended by the other members of PO1 Gaerlan’s team and were subsequently informed of their constitutional rights.¹⁶

PO1 Christopher Años (PO1 Años), a member of PO1 Gaerlan’s team, seized the following items that were on top of the table: 1) money in different denominations amounting to ₱3,500.00; 2) 30 plastic sachets of suspected *shabu*; 3) three bundles of plastic sachets; 4) three pairs of scissors; and 5) one improvised burner.¹⁷ PO1 Años put the necessary markings on the seized items, and listed the serial numbers of the seized peso bills.¹⁸

Afterwards, the team brought the suspects to the San Mateo Police Station to be blotted, while the specimens were brought to the Eastern Police District Crime Laboratory for examination. From the San Mateo Police Station, all the accused were brought to the Marikina Police Station and then to the Amang Rodriguez Medical Center for medical check-up. Ressurreccion was also taken to Camp Crame for powder dust testing.¹⁹

Based on the Physical Science Report No. D-1879-03E dated October 3, 2003 of Forensic Chemical Officer Police Senior Inspector Annalee Forro who examined the specimens submitted by the buy-bust team, 30 heat-sealed plastic sachets contained *Methamphetamine Hydrochloride* or *shabu*.²⁰ In addition, according to Chemistry Report Number 0-430-03 dated October 2, 2003 by Forensic Chemical Officer Police Inspector Sandra Decena Go, Ressurreccion tested positive for the presence of a bright ultra-violet fluorescent powder on both the palmar and dorsal sides of both her hands.²¹

On the other hand, the defense alleged²² that Alcantara was the daughter-in-law of Ressurreccion. While she was in Ressurreccion’s house on October 2, 2003, seven men suddenly barged in and conducted a search thereat. Thereafter, three of the men brought Ressurreccion outside of the

¹⁶ TSN, March 11, 2004, p. 10-12.

¹⁷ TSN, April 20, 2004, pp. 13-19.

¹⁸ TSN, March 11, 2004, p. 14.

¹⁹ TSN, March 11, 2004, p. 14.

²⁰ Records, p.14.

²¹ Id. at 18.

²² See Brief for the Accused-appellants dated October 2, 2013; CA *rollo*, pp. 32-60.

house while the other four continued with the search and took a mountain bike, DVD player, video camera, and jewelries. They then brought Ressurreccion inside a vehicle so Alcantara likewise rode the same so she can accompany her. The vehicle stopped at a house in Daangbakal to unload the things taken from them and then they were subsequently brought to Marikina Police Station where they were informed that a case involving dangerous drugs would be filed against them.²³

As for Cruz, the defense alleged that he was in the house of Ressurreccion on October 2, 2003 because Ressurreccion asked him to clean her house along with the other accused Decena and Robles. They alleged that while Cruz was cleaning the house, three persons entered the house looking for a certain "Jonjon Buddha." Afterwards, they just arrested Cruz and boarded him in a vehicle with Alcantara, Ressurreccion, and Manuel. Cruz alleged that while the commotion was happening and even while they were being boarded in the vehicle, there were no representatives from the barangay or the media.²⁴ Although Ressurreccion earlier asked her grandchildren to call a barangay official and police officer from San Mateo, Rizal, they arrived only after they were already inside the vehicle.²⁵ They were then brought to a house in Daangbakal and then to Marikina Police Station.²⁶ Cruz testified that while they were being questioned in Marikina Police Station, there were still no members of the IBP or members of the media.²⁷

Ruling of the RTC

After trial on the merits, in its Decision dated February 3, 2011,²⁸ the RTC convicted Cruz and Alcantara, together with the other accused, of the crime charged. The dispositive portion of the said Decision reads:

WHEREFORE, premises considered, judgment is hereby rendered, as follows:

1. In Criminal Case No. 7140, finding accused(s) Ressurreccion Ressurreccion y Robles, Carol Alcantara y Mapata and Joselito Cruz y De Guzman GUILTY beyond reasonable doubt of the crime of SALE OF DANGEROUS DRUG (violation of Section 5, 1st paragraph Article II, RA 9165) and sentencing each of them to suffer the penalty of Life Imprisonment and a fine of Five Hundred Thousand Pesos (P 500,000.00); The charge against Jonathan Manuel y Otig, Aniceto Decena y Gonzaga and Jerry Robles y Unato are hereby DISMISSED upon reasonable doubt.

2. In Criminal Case No. 7141, finding accused(s) Ressurreccion Ressurreccion y Robles, Carol Alcantara y Mapata, Joselito Cruz y De Guzman, Jonathan Manuel y Otig, Aniceto Decena y Gonzaga

²³ CA *rollo*, pp. 40-41.

²⁴ Id.; TSN, May 14, 2009, p. 9.

²⁵ TSN, May 14, 2009, p. 9.

²⁶ TSN, May 14, 2009, p. 9-10.

²⁷ TSN, May 14, 2009, p. 10.

²⁸ CA *rollo*, pp. 62-80.



and Jerry Robles y Unato GUILTY beyond reasonable doubt of the crime of POSSESSION OF DANGEROUS DRUG (violation of Section 11, 2nd paragraph, No. 3 Article II, RA 9165) and sentencing each of them to Twelve (12) years and one (1) day to Twenty (20) years and a fine of Three Hundred Thousand Pesos (P 300,000.00).

The plastic sachets of shabu or Methylamphetamine Hydrochloride subject matter of these cases are hereby ordered forfeited in favor of the government and the Branch Clerk of Court is hereby directed to safely deliver the same to the Philippine Drug Enforcement Agency (PDEA) for proper disposition.

The accused are to be credited for the time spent for their preventive detention in accordance with Art. 29 of the Revised Penal Code as amended by R.A. 6127 and E.O. 214.

Accused Ressurreccion Ressurreccion y Robles, Carol Alcantara y Mapata, Jonathan Manuel y Otig, Aniceto Decena y Gonzaga, Jerry Robles y Onato and Joselito Cruz y De Guzman are hereby ordered committed to the National Bilibid Prisons in Muntinlupa City for service of sentence.

SO ORDERED.²⁹

The RTC ruled that the prosecution proved all the essential elements of the crimes charged.³⁰ Further, it found an unbroken chain of custody in the handling of the dangerous drugs, considering that: (a) PO1 Gaerlan and PO1 Años immediately conducted an inventory and placed markings on the seized items at the place of the arrest; (b) the dangerous drugs were thereafter brought to the Eastern Police District Crime Laboratory for laboratory examination; (c) the items were received and examined by Police Senior Inspector Annalee Forro who determined that the confiscated items were indeed *methamphetamine hydrochloride*. The RTC ruled that proper chain of custody was established, especially since the police officers are presumed to have performed their duties in a regular manner unless there is evidence to the contrary which suggests ill-motive or deviation from the regular performance of duties.³¹

Aggrieved, the accused-appellants appealed to the CA.³²

Ruling of the CA

In the questioned Decision³³ dated September 27, 2016, the CA affirmed the RTC's conviction of the accused-appellants, holding that the prosecution was able to prove the elements of the crimes charged. The CA gave credence to the testimony of the prosecution witnesses as they are police officers presumed to have performed their duties in a regular manner.

²⁹ Id. at 80.

³⁰ CA *rollo*, pp. 74-78.

³¹ Id. at 78-79.

³² See Notice of Appeal dated March 23, 2011, records, p. 606.

³³ *Rollo*, pp. 2-18.



It further held that “non-compliance with Section 21 of RA 9165 does not necessarily affect the integrity of the evidence and result in the acquittal of the accused” and “what is of utmost importance is the preservation of the integrity and evidentiary value of the seized items because the same will be utilized in ascertaining the guilt or innocence of the accused”³⁴ and went on to hold that the prosecution was able to establish the proper chain of custody.

Hence, the instant appeal.

Issue

Proceeding from the foregoing, for resolution of this Court is the issue of whether the RTC and the CA erred in convicting the accused-appellants.

The Court’s Ruling

The appeal is meritorious. The Court acquits the accused-appellants for failure of the prosecution to prove their guilt beyond reasonable doubt.

The accused-appellants were charged with the crimes of illegal sale and illegal possession of dangerous drugs, respectively defined and penalized under Sections 5 and 11, Article II of RA 9165. In order to convict a person charged with the crime of illegal sale of dangerous drugs under Section 5, Article II of RA 9165, the prosecution must prove the following elements: (1) the identity of the buyer and the seller, the object and the consideration; and (2) the delivery of the thing sold and the payment therefor.³⁵ On the other hand, to reach a conviction in a case involving the crime of illegal possession of dangerous drugs, the following must be proved beyond reasonable doubt: (1) the accused is in possession of an item or object which is identified to be a prohibited drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the said drug.³⁶

In either case, however, the State bears not only the burden of proving these elements, but also of proving the *corpus delicti* or the body of the crime. In drug cases, the dangerous drug itself is the very *corpus delicti* of the violation of the law.³⁷ While it is true that a buy-bust operation is a legally effective and proven procedure, sanctioned by law, for apprehending drug peddlers and distributors,³⁸ the law nevertheless also requires strict compliance with procedures laid down by it to ensure that rights are safeguarded.

In all drugs cases, compliance with the chain of custody rule is crucial in any prosecution that follows such operation. Chain of custody means the duly recorded authorized movements and custody of seized drugs or

³⁴ Id. at 14.

³⁵ *People v. Opiana*, 750 Phil. 140, 147 (2015).

³⁶ *People v. Vasquez*, 724 Phil. 713, 732 (2014).

³⁷ *People v. Guzon*, 719 Phil. 441, 450-451 (2013).

³⁸ *People v. Mantalaba*, 669 Phil. 461, 471 (2011).



controlled chemicals from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction.³⁹ The rule is imperative, as it is essential that the prohibited drug confiscated or recovered from the suspect is the very same substance offered in court as exhibit; and that the identity of said drug is established with the same unwavering exactitude as that requisite to make a finding of guilt.⁴⁰

In this connection, Section 21, Article II of RA 9165,⁴¹ the applicable law at the time of the commission of the alleged crimes, lays down the procedure that police operatives must follow to maintain the integrity of the confiscated drugs used as evidence. The provision requires that: (1) the seized items be inventoried and photographed immediately after seizure or confiscation; and (2) that the physical inventory and photographing must be done in the presence of (a) the accused or his/her representative or counsel, (b) an elected public official, (c) a representative from the media, and (d) a representative from the DOJ, all of whom shall be required to sign the copies of the inventory and be given a copy thereof.

This must be so because the possibility of abuse is great given the very nature of anti-narcotics operations, the need for entrapment procedures, the use of shady characters as informants, 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.⁴²

Section 21 of RA 9165 further requires the apprehending team to conduct a physical inventory of the seized items and the photographing of the same **immediately after seizure and confiscation**. The said inventory must be done **in the presence of the aforementioned required witness**, all of whom shall be required to sign the copies of the inventory and be given a copy thereof.

The phrase “immediately after seizure and confiscation” means that the physical inventory and photographing of the drugs were intended by the law to be made immediately after, or at the place of apprehension. It is only when

³⁹ *People v. Guzon*, supra note 37 at 451, citing *People v. Dumaplin*, 700 Phil. 737 (2012).

⁴⁰ *Id.*, citing *People v. Remigio*, 700 Phil. 452 (2012).

⁴¹ The said section reads as follows:

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

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

⁴² *People v. Santos*, 562 Phil. 458, 471 (2007), citing *People v. Tan*, 401 Phil. 259, 273 (2000).



the same is not practicable that the Implementing Rules and Regulations (IRR) of RA 9165 allows the inventory and photographing to be done as soon as the buy-bust team reaches the nearest police station or the nearest office of the apprehending officer/team.⁴³ In this connection, this also means that the three 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.** Verily, a buy-bust team normally has enough time to gather and bring with them the said witnesses.

It is true that there are cases where the Court had ruled that the failure of the apprehending team to strictly comply with the procedure laid out in Section 21 of RA 9165 does not *ipso facto* render the seizure and custody over the items void and invalid. However, this is with the caveat that the prosecution still needs to satisfactorily prove that: (a) there is justifiable ground for non-compliance; and (b) the integrity and evidentiary value of the seized items are properly preserved.⁴⁴ This Court has emphasized that the prosecution should explain the reasons behind the procedural lapses.⁴⁵

In the present case, the apprehending team led by PO1 Gaerlan did not conduct the buy-bust operation or the inventory post-operation in the presence of the required witnesses. PO1 Gaerlan testified in this wise:

Q: Now, after giving their names and informing them of their constitutional rights and the law they had violated, Mr. Witness, what, if any, did you and your companions do then, if you did anything?

A: I immediately placed the markings on the evidence confiscated from Ressurreccion Ressurreccion and the other evidence was marked by PO1 Anos, sir.

Q: After that, what happened next, Mr. Witness?

⁴³ IRR of RA 9165, Art. II, Section 21 (a).

⁴⁴ *People v. Ceralde*, G.R. No. 228894, August 7, 2017, 834 SCRA 613, 625.

⁴⁵ *People v. Dela Victoria*, G.R. No. 233325, April 16, 2018, accessed at <<http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64112>>; *People v. Descalso*, G.R. No. 230065, March 14, 2018, accessed at <<http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64066>>; *People v. Año*, G.R. No. 230070, March 14, 2018, accessed at <<http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/63982>>; *People v. Lumaya*, G.R. No. 231983, March 7, 2018, accessed at <<http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/63985>>; *People v. Magsano*, G.R. No. 231050, February 28, 2018, accessed at <<http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/63959>>; *People v. Ramos*, G.R. No. 233744, February 28, 2018, accessed at <<http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/63948>>; *People v. Manansala*, G.R. No. 229092, February 21, 2018, accessed at <<http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/63936>>; *People v. Paz*, G.R. No. 229512, January 31, 2018, accessed at <<http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/63919>>; *People v. Miranda*, G.R. No. 229671, January 31, 2018, accessed at <<http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/63999>>; *People v. Mamangon*, G.R. No. 229102, January 29, 2018, accessed at <<http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64016>>; *People v. Jugo*, G.R. No. 231792, January 29, 2018, accessed at <<http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/63908>>; *People v. Alvaro*, G.R. No. 225596, January 10, 2018, accessed at <<http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/63871>>; *People v. Almorfe*, 631 Phil. 51, 60 (2010).

A: We immediately brought them to our office and afterwards to the Eastern Police District Crime Laboratory for drug testing and laboratory examination, sir.

Q: Tell us what happened to the plastic sachets which were the subject of the sale and the plastic sachets which were recovered from that table, Mr. Witness?

A: We brought them to the EPD Crime Lab., sir.

Q: Together with the accused, Mr. Witness?

A: Yes, sir.

Q: You said that the items which were the subject of the sale and the items confiscated from that table were marked, Mr. Witness, who marked these plastic sachets?

A: PO1 Años, sir.

Q: And where were you when these were marked by PO1 Años?

A: We were facing each other, sir.⁴⁶

Meanwhile, PO1 Años testified as follows:

Q: Where were you when the other accused were arrested?

A: I was inside the house and putting some markings on the evidence, sir.

Q: After the arrest of these persons, where were they taken?

A: They were taken first at the San Mateo Police Station to be blotted there and then we brought them to our office, Marikina Police Station, sir.⁴⁷

Cruz testified that no person from the media or any elected public official was present during the buy-bust operation or during the post-operation inventory. He testified as follows:

Q: Mr. Witness, when you were brought outside of the house before you were boarded inside the vehicle, who else were there aside from the police officers and your co-accused?

A: There were [many] people watching us, sir.

Q: Are there persons coming from the barangay?

⁴⁶ TSN, March 11, 2004, pp. 13-14.

⁴⁷ TSN, April 20, 2004, p. 21.



- A: None, sir, but Nanay Siony [Ressurreccion] asked her grandchildren to call a barangay official and police officer from San Mateo, Rizal, sir.
- Q: But prior to you boarding that vehicle, was there any barangay official at that time?
- A: None, sir.
- Q: So where did the police officers bring you?
- A: First, we were brought at Daangbakal Fairlane, sir.
- Q: After that?
- A: Then we proceeded to Marikina, sir.
- Q: So from Daangbakal, you proceeded to the precinct of Marikina?
- A: Yes, sir.
- Q: What transpired after that?
- A: Our names were taken, sir.
- Q: In the precinct, were there members of the media?
- A: None, sir.
- Q: When you were being questioned, were you with any person who are members of the IBP?
- A: None, sir.⁴⁸

This testimony of Cruz was never challenged by the prosecution during his cross-examination. Neither did the prosecution witnesses offer a version which would contradict the same. The prosecution did not also address the issue in their pleadings and instead relied only on the presumption that police officers performed their functions in the regular manner.

It bears emphasis that the presence of the required witnesses at the time of the apprehension and inventory is mandatory, and that the law imposes the said requirement because their presence serves an essential purpose. In *People v. Tomawis*,⁴⁹ the Court elucidated on the purpose of the law in mandating the presence of the required witnesses as follows:

⁴⁸ TSN, May 14, 2009, pp. 9-10.

⁴⁹ G.R. No. 228890, April 18, 2018, accessed at <<http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64241>>.



The presence of the witnesses from the DOJ, media, and from public elective office is necessary to protect against the possibility of planting, contamination, or loss of the seized drug. Using the language of the Court in *People v. Mendoza*,⁵⁰ without the *insulating presence* of the representative from the media or the DOJ and any elected public official during the seizure and marking of the drugs, the evils of switching, “planting” or contamination of the evidence that had tainted the buy-busts conducted under the regime of RA 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 subject sachet that were evidence of the *corpus delicti*, and thus adversely affected the trustworthiness of the incrimination of the accused.⁵¹

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

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

To restate, the presence of the three witnesses at the time of seizure and confiscation of the drugs must be secured and complied with at the time of the warrantless arrest; such that they are required to be at or near the intended place of the arrest so that they can be ready to witness the inventory and photographing of the seized and confiscated drugs “immediately after seizure and confiscation.”⁵² (Emphasis in the original)

It is important to point out that the apprehending team in this case had more than ample time to comply with the requirements established by law. PO1 Gaerlan testified that before executing the operation, they even coordinated with PDEA via phone call and with the San Mateo Police through a letter of coordination.⁵³ Hence, the police officers had all the time to coordinate with the required witnesses — namely, an elected official, a representative from the DOJ, and a member of the media — so as to be compliant with the law. The records of this case, however, indubitably reveal that neither the police officers nor the prosecution offered any explanation for such deviation.

This Court emphasizes that while it is laudable that police officers exert earnest efforts in catching drug pushers, they must always be advised to do this

⁵⁰ 736 Phil. 749 (2014).

⁵¹ Id. at 764.

⁵² *People v. Tomawis*, supra note 49.

⁵³ TSN, March 11, 2004, p. 5-7.



within the bounds of the law.⁵⁴ Without the insulating presence of the representative from the media and the DOJ, and any elected public official during the seizure and marking of the sachets of *shabu*, the evils of switching, “planting” or contamination of the evidence 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*. Thus, this 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.⁵⁵

Concededly, Section 21 of the IRR of RA 9165 provides 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.” For this provision to be effective, however, the prosecution must first (1) recognize any lapse on the part of the police officers and (2) be able to justify the same.⁵⁶ 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* would have been compromised.⁵⁷ As the Court explained in *People v. Reyes*:⁵⁸

Under the last paragraph of Section 21(a), Article II of the IRR of R.A. No. 9165, a saving mechanism has been provided to ensure that not every case of non-compliance with the procedures for the preservation of the chain of custody will irretrievably prejudice the Prosecution's case against the accused. **To warrant the application of this saving mechanism, however, the Prosecution must recognize the lapse or lapses, and justify or explain them. Such justification or explanation would be the basis for applying the saving mechanism.** Yet, the Prosecution did not concede such lapses, and did not even tender any token justification or explanation for them. **The failure to justify or explain underscored the doubt and suspicion about the integrity of the evidence of the *corpus delicti*.** With the chain of custody having been compromised, the accused deserves acquittal.⁵⁹

In sum, the prosecution failed to provide justifiable grounds for the apprehending team's deviation from the rules laid down in Section 21 of RA 9165. The integrity and evidentiary value of the *corpus delicti* have thus been compromised. In light of this, the accused-appellants must perforce be acquitted.

WHEREFORE, in view of the foregoing, the appeal is hereby **GRANTED**. The Decision dated September 27, 2016 of the Court of Appeals in CA-G.R. CR HC No. 05961 is hereby **REVERSED** and **SET ASIDE**.

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

⁵⁵ *People v. Mendoza*, supra note 50 at 764.

⁵⁶ See *People v. Alagarme*, 754 Phil. 449, 461 (2015).

⁵⁷ See *People v. Sumili*, 753 Phil. 342, 350 (2015).

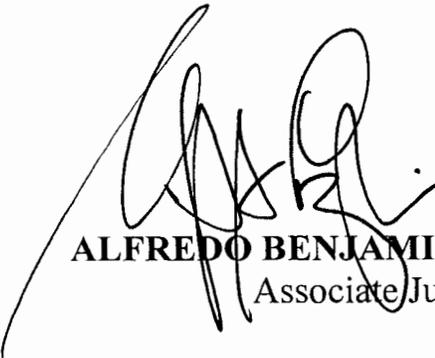
⁵⁸ 797 Phil. 671 (2016).

⁵⁹ *Id.* at 690.

Accordingly, accused-appellants **CAROL ALCANTARA y MAPATA** and **JOSELITO CRUZ y DE GUZMAN** are **ACQUITTED** of the crimes charged. The Director of the Bureau of Corrections is ordered to cause their immediate release unless they are being lawfully held in custody for another reason. Let an entry of final judgment be issued immediately.

Let a copy of this Decision be furnished the Director of the Bureau of Corrections 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.

SO ORDERED.



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

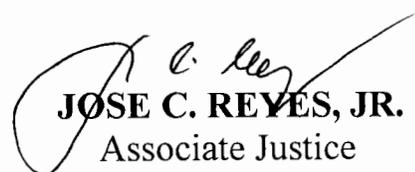
WE CONCUR:



ANTONIO T. CARPIO
Associate Justice
Chairperson



ESTELA M. PERLAS-BERNABE
Associate Justice



JOSE C. REYES, JR.
Associate Justice



AMY C. LAZARO-JAVIER
Associate Justice

ATTESTATION

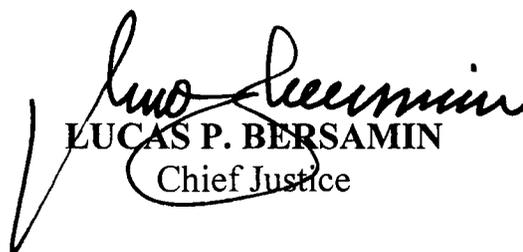
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



ANTONIO T. CARPIO
Associate Justice
Chairperson

CERTIFICATION

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



LUCAS P. BERSAMIN
Chief Justice

