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*Wilfredo V. Lapitan*  
WILFREDO V. LAPITAN  
Division Clerk of Court  
Third Division

MAR 23 2018

Republic of the Philippines  
Supreme Court  
Manila

THIRD DIVISION

PEOPLE OF THE PHILIPPINES,  
Plaintiff-appellee,

G.R. No. 212994

Present:

VELASCO, JR., *J.*, *Chairperson*,  
BERSAMIN,  
LEONEN,  
MARTIRES,\* and  
GESMUNDO, *JJ.*

-versus-

JOSHUA QUE Y UTUANIS,  
Accused-appellant.

Promulgated:

January 31, 2018

*Wilfredo V. Lapitan*

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DECISION

LEONEN, *J.*:

The chain of custody requirements in the Comprehensive Dangerous Drugs Act are cast in precise, mandatory language. They are not stringent for stringency's own sake. Rather, they are calibrated to preserve the even greater interest of due process and the constitutional rights of those who stand to suffer from the State's legitimate use of force, and therefore, stand to be deprived of liberty, property, and, should capital punishment be imposed, life. This calibration balances the need for effective prosecution of those involved in illegal drugs and the preservation of the most basic liberties that typify our democratic order.

This resolves an appeal from the August 12, 2013 Decision<sup>1</sup> of the

\* On official business, as per Letter dated January 18, 2018.

<sup>1</sup> *Rollo*, pp. 320. The Decision was penned by Associate Justice Renato C. Francisco and concurred in by Associate Justices Romulo V. Borja and Oscar V. Badelles of the Twenty-First Division, Court of Appeals, Cagayan de Oro City.

Court of Appeals in CA-G.R. CR-HC No. 00681-MIN, convicting Joshua Que y Utuanis (Que) for violation of Sections 5<sup>2</sup> and 11<sup>3</sup> of Republic Act No.

<sup>2</sup> Rep. Act No. 9165 (2002), sec. 5 provides:

Section 5. *Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals.* — The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (P500,000.00) to Ten million pesos (P10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions.

The penalty of imprisonment ranging from twelve (12) years and one (1) day to twenty (20) years and a fine ranging from One hundred thousand pesos (P100,000.00) to Five hundred thousand pesos (P500,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any controlled precursor and essential chemical, or shall act as a broker in such transactions.

If the sale, trading, administration, dispensation, delivery, distribution or transportation of any dangerous drug and/or controlled precursor and essential chemical transpires within one hundred (100) meters from the school, the maximum penalty shall be imposed in every case.

For drug pushers who use minors or mentally incapacitated individuals as runners, couriers and messengers, or in any other capacity directly connected to the dangerous drugs and/or controlled precursors and essential chemicals trade, the maximum penalty shall be imposed in every case.

If the victim of the offense is a minor or a mentally incapacitated individual, or should a dangerous drug and/or a controlled precursor and essential chemical involved in any offense herein provided be the proximate cause of death of a victim thereof, the maximum penalty provided for under this Section shall be imposed.

The maximum penalty provided for under this Section shall be imposed upon any person who organizes, manages or acts as a “financier” of any of the illegal activities prescribed in this Section.

The penalty of twelve (12) years and one (1) day to twenty (20) years of imprisonment and a fine ranging from One hundred thousand pesos (P100,000.00) to Five hundred thousand pesos (P500,000.00) shall be imposed upon any person, who acts as a “protector/coddler” of any violator of the provisions under this Section.

<sup>3</sup> Rep. Act No. 9165 (2002), sec. 11 provides:

Section 11. *Possession of Dangerous Drugs.* — The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (P500,000.00) to Ten million pesos (P10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall possess any dangerous drug in the following quantities, regardless of the degree of purity thereof:

- (1) 10 grams or more of opium;
- (2) 10 grams or more of morphine;
- (3) 10 grams or more of heroin;
- (4) 10 grams or more of cocaine or cocaine hydrochloride;
- (5) 50 grams or more of methamphetamine hydrochloride or “shabu”;
- (6) 10 grams or more of marijuana resin or marijuana resin oil;
- (7) 500 grams or more of marijuana; and
- (8) 10 grams or more of other dangerous drugs such as, but not limited to,

methylenedioxymethamphetamine (MDA) or “ecstasy”, paramethoxyamphetamine (PMA), trimethoxyamphetamine (TMA), lysergic acid diethylamine (LSD), gamma hydroxybutyrate (GHB), and those similarly designed or newly introduced drugs and their derivatives, without having any therapeutic value or if the quantity possessed is far beyond therapeutic requirements, as determined and promulgated by the Board in accordance to Section 93, Article XI of this Act.

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

(1) Life imprisonment and a fine ranging from Four hundred thousand pesos (P400,000.00) to Five hundred thousand pesos (P500,000.00), if the quantity of methamphetamine hydrochloride or “shabu” is ten (10) grams or more but less than fifty (50) grams;

(2) Imprisonment of twenty (20) years and one (1) day to life imprisonment and a fine ranging from Four hundred thousand pesos (P400,000.00) to Five hundred thousand pesos (P500,000.00), if the quantities of dangerous drugs are five (5) grams or more but less than ten (10) grams of opium, morphine, heroin, cocaine or cocaine hydrochloride, marijuana resin or marijuana resin oil, methamphetamine hydrochloride or “shabu”, or other dangerous drugs such as, but not limited to, MDMA or “ecstasy”, PMA, TMA, LSD, GHB, and those similarly designed or newly introduced drugs and their derivatives, without having any therapeutic value or if the quantity possessed is far beyond therapeutic requirements; or three hundred (300) grams or more but less than five hundred (500) grams of marijuana; and

(3) Imprisonment of twelve (12) years and one (1) day to twenty (20) years and a fine ranging from Three hundred thousand pesos (P300,000.00) to Four hundred thousand pesos (P400,000.00), if

9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002, for illegal sale and possession of dangerous drugs.

In two (2) separate Informations, both dated July 27, 2003, accused-appellant Que was charged with violating Sections 5 and 11 of the Comprehensive Dangerous Drugs Act, as follows:

Criminal Case No. 4943 (19810)

That on or about July 26, 2003, in the City of Zamboanga, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused not being authorized by law to sell, deliver, give away to another, transport or distribute any dangerous drug, did then and there, willfully, unlawfully and feloniously SELL and DELIVER to PO3 SAMMY ROMINA LIM, a member of the PNP, who acted . . . as poseur-buyer, one (1) small size heat-sealed transparent plastic pack containing 0.0157 gram of white crystalline substance which when subjected to qualitative examination gave positive result to the tests for the presence of METHAMPHETAMINE HYDROCHLORIDE (shabu), knowing the same to be a dangerous drug.

CONTRARY TO LAW.<sup>4</sup>

Criminal Case No. 4944 (19811)

That on or about July 26, 2003, in the City of Zamboanga, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused not being authorized by law, did then and there willfully, unlawfully and feloniously have in his possession and under his custody and control, one (1) small size heat-sealed transparent plastic pack containing 0.0783 gram of white crystalline substance which when subjected to qualitative examination gave positive result to the tests for the presence of METHAMPHETAMINE HYDROCHLORIDE (shabu), knowing the same to be a dangerous drug.

CONTRARY TO LAW.<sup>5</sup>

On July 30, 2003, Que filed a Motion to Quash Information and Warrant of Arrest and Admission to Bail. He pleaded not guilty to both charges when he was arraigned on June 7, 2004.<sup>6</sup>

During the hearings for the bail petition, the prosecution presented

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the quantities of dangerous drugs are less than five (5) grams of opium, morphine, heroin, cocaine or cocaine hydrochloride, marijuana resin or marijuana resin oil, methamphetamine hydrochloride or "shabu", or other dangerous drugs such as, but not limited to, MDMA or "ecstasy", PMA, TMA, LSD, GHB, and those similarly designed or newly introduced drugs and their derivatives, without having any therapeutic value or if the quantity possessed is far beyond therapeutic requirements; or less than three hundred (300) grams of marijuana.

<sup>4</sup> CA rollo, p. 26.

<sup>5</sup> Id.

<sup>6</sup> Id. at 27.

three (3) witnesses: the poseur-buyer, PO3 Sammy Romina Lim (PO3 Lim); the arresting officer, SPO1 Samuel Tan Jacinto (SPO1 Jacinto); and forensic chemist Police Chief Inspector Mercedes D. Diestro (P/C Insp. Diestro).<sup>7</sup>

PO3 Lim of the Philippine National Police Zamboanga City Mobile Group recounted that in the morning of July 26, 2003, an informant reported that a person identified as “Joshua,” later identified as Que, was selling shabu. Acting on this report, P/C Insp. Nickson Babul Muksan (P/C Insp. Muksan) organized a buy-bust operation with PO3 Lim as poseur-buyer. PO3 Lim and the informant then left for the area of Fort Pilar. There, the informant introduced PO3 Lim to Que. PO3 Lim then told Que that he intended to purchase ₱100.00 worth of shabu. Que then handed him shabu inside a plastic cellophane. In turn, PO3 Lim handed Que the marked ₱100.00 bill and gave the pre-arranged signal to have Que arrested.<sup>8</sup>

After the arrest, the marked bill and another sachet of shabu were recovered from Que. Que was then brought to the police station where the sachets of shabu and the marked bill were turned over to the investigator, SPO4 Eulogio Tubo (SPO4 Tubo),<sup>9</sup> who then marked these items with his initials. He also prepared the letter request for laboratory examination of the sachets’ contents.<sup>10</sup> Arresting officer SPO1 Jacinto also testified to the same circumstances recounted by PO3 Lim.<sup>11</sup>

P/C Insp. Diestro recounted their office’s receipt of a request for laboratory examination of the contents of two (2) plastic sachets. She noted that these contents tested positive for shabu.<sup>12</sup>

On January 24, 2007, the Regional Trial Court denied Que’s plea for bail. Trial on the merits followed. In lieu of presenting evidence, the prosecution manifested that it was adopting the testimonies of the witnesses presented in the hearings for bail.<sup>13</sup>

Que was the sole witness for the defense. He recalled that in the morning of July 26, 2003, he went to Fort Pilar Shrine to light candles and to pray. He then left on board a tricycle. Mid-transit, six (6) persons blocked the tricycle and told him to disembark. After getting off the tricycle, he was brought to a house some five (5) meters away. Two (2) men, later identified as PO3 Lim and SPO1 Jacinto, searched his pockets but found nothing. About 30 minutes later, another man arrived and handed something to SPO1

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<sup>7</sup> Id.

<sup>8</sup> Id. at 27–28.

<sup>9</sup> Id. at 28.

<sup>10</sup> Id. at 98.

<sup>11</sup> Id. at 28–29.

<sup>12</sup> Id. at 27.

<sup>13</sup> Id. at 99–100.

Jacinto. Que was then brought to the police station and turned over to SPO4 Tubo and was subsequently detained at the Zamboanga City Police Station.<sup>14</sup>

In its July 17, 2008 Judgment,<sup>15</sup> Branch 12, Regional Trial Court, Zamboanga City found Que guilty as charged and rendered judgment as follows:

WHEREFORE, in view of the foregoing, in Criminal Case No. 4943 (19810), this Court hereby finds the accused, JOSHUA QUE y UTUANIS guilty beyond reasonable doubt for violation of Section 5, Article II of Republic Act No. 9165 or the Comprehensive Dangerous Drugs Act of 2002 and he is hereby sentenced to suffer the penalty of LIFE IMPRISONMENT and to pay the fine of P1,000[,]000.00.

In Criminal Case No. 4944 (19811), this Court likewise finds the accused JOSHUA QUE y UTUANIS guilty beyond reasonable doubt for violation of Section 11, Article II of Republic Act No. 9165 or the Comprehensive Dangerous Drugs Act of 2002 and he is hereby sentenced to suffer the indeterminate penalty of TWELVE (12) YEARS and ONE (1) DAY to FIFTEEN (15) YEARS of imprisonment and to pay a fine of P300,000.00 and, to pay the cost of this suit.

The dangerous drugs seized and recovered from the accused in these cases are hereby ordered confiscated and forfeited in favor of the government and are hereby ordered disposed with in accordance with the pertinent provisions of Republic Act No. 9165 and it[s] implementing rules and regulation.<sup>16</sup>

In its assailed August 12, 2013 Decision, the Court of Appeals affirmed the Regional Trial Court's ruling *in toto*.<sup>17</sup> Thereafter, Que filed his Notice of Appeal.<sup>18</sup>

In its August 6, 2014 Resolution,<sup>19</sup> this Court noted the records forwarded by the Court of Appeals and informed the parties that they may file their supplemental briefs.

On October 3, 2014, the Office of the Solicitor General filed a Manifestation,<sup>20</sup> on behalf of the People of the Philippines, noting that it would no longer file a supplemental brief.

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<sup>14</sup> Id. at 100–101.

<sup>15</sup> Id. at 26–39. The Judgment, docketed as Criminal Case Nos. 4943 (19810) & 4944 (19811), was penned by Presiding Judge Gregorio V. De La Pena III of Branch 12, Regional Trial Court, Zamboanga City.

<sup>16</sup> Id. at 38–39.

<sup>17</sup> Id. at 93–110.

<sup>18</sup> Id. at 174–182.

<sup>19</sup> *Rollo*, p. 24-A.

<sup>20</sup> Id. at 29–31.

On October 10, 2014, Que filed his Supplemental Brief.<sup>21</sup>

For this Court's resolution is the issue of whether or not accused-appellant Joshua Que's guilt for violating Sections 5 and 11 of the Comprehensive Dangerous Drugs Act of 2002 was proven beyond 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 as, excluding possibility of error, produces absolute certainty. Moral certainty only is required, or that degree of proof which produces conviction in an unprejudiced mind.<sup>22</sup>

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

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<sup>21</sup> Id. at 32–59.

<sup>22</sup> RULES OF COURT, Rule 133, sec. 2.

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.<sup>23</sup>

## II

The requisites that must be satisfied to sustain convictions for illegal sale of dangerous drugs under Section 5, and illegal possession of dangerous drugs under Section 11 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.

On the other hand, in prosecutions for illegal possession of a dangerous drug, it must be shown that (1) the accused was in possession of an item or an object identified to be a prohibited or regulated drug, (2) such possession is not authorized by law, and (3) the accused was freely and consciously aware of being in possession of the drug. Similarly, in this case, the evidence of the *corpus delicti* must be established beyond reasonable doubt.<sup>24</sup>

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<sup>23</sup> *Macayan, Jr. y Malana v. People*, 756 Phil. 202, 213–241 (2015) [Per J. Leonen, Second Division], citing CONST. art. III, sec. 1; CONST. art. III, sec. 14 (2); *People of the Philippines v. Solayao*, 330 Phil. 811, 819 (1996) [Per J. Romero, Second Division]; and *Boac v. People of the Philippines*, 591 Phil. 508 (2008) [Per J. Velasco, Jr., Second Division].

<sup>24</sup> *People v. Morales*, 630 Phil. 215, 228 (2010) [Per J. Del Castillo, Second Division], citing *People v. Darisan, et al.*, 597 Phil. 479, 485 (2009) [Per J. Corona, First Division] and *People v. Partoza*, 605 Phil. 883, 890 (2009) [Per J. Tinga, Second Division].

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

(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[.]<sup>25</sup>  
(Emphasis supplied)

In *People v. Nandi*,<sup>26</sup> the four (4) links in the chain of custody are established:

Thus, the following 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.<sup>27</sup>

*People v. Morales*<sup>28</sup> explained that “failure to comply with Paragraph 1, Section 21, Article II of RA 9165 implie[s] a concomitant failure on the part of the prosecution to establish the identity of the *corpus delicti*.”<sup>29</sup> It “produce[s] doubts as to the origins of the [seized paraphernalia].”<sup>30</sup>

Compliance with Section 21’s chain of custody requirements ensures the integrity of the seized items. Non-compliance with them 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. In *People v. Belocura*:<sup>31</sup>

Worse, the Prosecution failed to establish the identity of the prohibited drug that constituted the *corpus delicti* itself. The omission naturally raises grave doubt about any search being actually conducted and warrants the suspicion that the prohibited drugs were planted evidence.

In every criminal prosecution for possession of illegal drugs, the Prosecution must account for the custody of the incriminating evidence from the moment of seizure and confiscation until the moment it is offered in evidence. That account goes to the weight of evidence. *It is not enough that the evidence offered has probative value on the issues, for the evidence must also be sufficiently connected to and tied with the facts in issue. The evidence is not relevant merely because it is available but that it has an actual connection with the transaction involved and with the parties thereto.* This is the reason why authentication and laying a

<sup>25</sup> Rep. Act No. 9165 (2002), sec. 21, par. 1–3.

<sup>26</sup> 639 Phil. 134 (2010) [Per J. Mendoza, Second Division].

<sup>27</sup> Id. at 133, citing *People v. Zaida Kamad*, 624 Phil. 289–312 [Per J. Brion, Second Division].

<sup>28</sup> *People v. Morales*, 630 Phil. 215–236 (2010) [Per J. Del Castillo, Second Division].

<sup>29</sup> Id. at 229.

<sup>30</sup> Id. citing *People v. Laxa*, 414 Phil. 156, 170 (2001) [Per J. Mendoza, Second Division], as cited in *People v. Orteza*, G.R. No. 173051, July 31, 2007, 528 SCRA 750, 758 [Per J. Tinga, Second Division].

<sup>31</sup> 693 Phil. 476 (2012) [Per J. Bersamin, First Division].

foundation for the introduction of evidence are important.<sup>32</sup> (Emphasis supplied, citations omitted)

Fidelity to the 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 planting of evidence conducive.

In *Mallillin v. People*:<sup>33</sup>

Indeed, *the likelihood of tampering, loss or mistake with respect to an exhibit is greatest when the exhibit is small and is one that has physical characteristics fungible in nature and similar in form to substances familiar to people in their daily lives.* *Graham vs. State* positively acknowledged this danger. In that case where a substance later analyzed as heroin—was handled by two police officers prior to examination who however did not testify in court on the condition and whereabouts of the exhibit at the time it was in their possession—was excluded from the prosecution evidence, the court pointing out that the white powder seized could have been indeed heroin or it could have been sugar or baking powder. It ruled that unless the state can show by records or testimony, the continuous whereabouts of the exhibit at least between the time it came into the possession of police officers until it was tested in the laboratory to determine its composition, testimony of the state as to the laboratory's findings is inadmissible.

*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.<sup>34</sup> (Emphasis supplied, citations omitted)


*People v. Holgado*,<sup>35</sup> recognized

<sup>32</sup> Id. at 495–496.

<sup>33</sup> 576 Phil. 576 (2008) [Per J. Tinga, Second Division].

<sup>34</sup> Id. at 588–589.

<sup>35</sup> G.R. No. 207992, August 11, 2014  
<<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2014/august2014/207992.pdf>>  
[Per J. Leonen, Third Division].



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.<sup>36</sup>

When the identity of *corpus delicti* is jeopardized by non-compliance with Section 21, critical elements of the offense of illegal sale and illegal possession of dangerous drugs remain wanting. It follows then, that this non-compliance justifies an accused's acquittal.

In *People v. Lorenzo*:<sup>37</sup>

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.*<sup>38</sup> (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 (2) targets with one (1) 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*<sup>39</sup> explained that the presumption of regularity applies only when officers have shown compliance with "the standard conduct of official duty required by law."<sup>40</sup> It

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<sup>36</sup> Id. at 10.

<sup>37</sup> 633 Phil. 393, 401 (2010) [Per J. Perez, Second Division].

<sup>38</sup> Id. at 401.

<sup>39</sup> 624 Phil. 289 (2010). [Per J. Brion, Second Division].

<sup>40</sup> Id. at 311.



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.<sup>41</sup> (Emphasis supplied, citation omitted)

Thus, jurisprudence has 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]”:<sup>42</sup>

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

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<sup>41</sup> Id.

<sup>42</sup> *People v. Navarrete*, 665 Phil. 738–749 (2011) [Per J. Carpio-Morales, Third Division]. See also *People v. Ulat*, 674 Phil. 484–501 (2011) [Per J. Leonardo-De Castro, First Division].

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.*<sup>43</sup> (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 the door open for tampering, substitution, and planting of evidence.

Even acts which approximate compliance but do not *strictly* comply with Section 21 have been considered insufficient. *People v. Magat*,<sup>44</sup> for example, emphasized the inadequacy of merely marking the items supposedly seized:

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

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<sup>43</sup> Id. at 748-749.

<sup>44</sup> 588 Phil. 395-407 (2008) [Per J. Tinga, Second Division].

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 the 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.*<sup>45</sup> (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.<sup>46</sup>

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

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<sup>45</sup> Id. at 403–406.

<sup>46</sup> Rep. Act No. 10640 (2013).

Republic Act No. 9165	Republic Act No. 10640
<p>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. —</p> <p>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:</p> <p>(1) The apprehending team having initial custody and control of the <i>drugs</i></p> <p>shall, immediately after seizure and confiscation,</p> <p><i>physically inventory</i></p> <p>and photograph the same</p> <p>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,</p> <p><i>a representative from the media and the Department of Justice (DOJ), and any elected public official</i></p> <p>who shall be required to sign the copies of the inventory and be given a copy thereof;</p>	<p>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. —</p> <p>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:</p> <p>(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></p> <p>shall, immediately after seizure and confiscation,</p> <p><i>conduct a physical inventory of the seized items</i></p> <p>and photograph the same</p> <p>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,</p> <p><i>with an elected public official and a representative of the National Prosecution Service or the media</i></p> <p>who shall be required to sign the copies of the inventory and be given a copy thereof:</p> <p><i>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:</i></p> <p><i>Provided, finally, That noncompliance of these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are</i></p>



	<i>properly preserved by the apprehending officer/team, shall not render void and invalid such seizures and custody over said items.</i>
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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, a representative from the Department of Justice; and

Third, any elected public official.<sup>47</sup>

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.<sup>48</sup>

Section 21(1), as amended, now includes a specification of locations where the physical inventory and taking of photographs must be conducted. The amended section uses the mandatory verb “shall” and now includes the following proviso:<sup>49</sup>

*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: . . .*<sup>50</sup> (Emphasis supplied)

*Lescano v. People*<sup>51</sup> summarized Section 21(1)’s requirements:

<sup>47</sup> Rep. Act No. 9165 (2002), sec. 21.

<sup>48</sup> Rep. Act No. 10640 (2013), sec. 1 *amending* Rep. Act No. 9165 (2002), sec. 21.

<sup>49</sup> This is not entirely novel. The Implementing Rules and Regulations of Republic Act No. 9165 already 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.

<sup>50</sup> Rep. Act No. 10640 (2013), sec. 1 *amending* Rep. Act No. 9165 (2002), sec. 21.

<sup>51</sup> G.R. No. 214490, January 13, 2016  
<<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/january2016/214490.pdf>>



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.<sup>52</sup>

## V

This case is tainted with grave, gratuitous violations of Section 21(1).

There is no showing that a proper inventory and taking of pictures was done by the apprehending officers. The marking of the sachets of shabu supposedly obtained from accused-appellant was conducted at a police station without accused-appellant, or any person representing him, around. There was not even a third person, whose presence was required by Section 21(1) prior to its amendment<sup>53</sup>—“a representative from the media and the Department of Justice (DOJ), *and* any elected public official.”

This Court is left with absolutely no guarantee of the integrity of the sachets other than the self-serving assurances of PO3 Lim and SPO1 Jacinto. This is precisely the situation that the Comprehensive Dangerous Drugs Act seeks to prevent. The very process that Section 21 requires is supposed to be a plain, standardized, even run-of-the-mill, guarantee that the integrity of the seized drugs and/or drug paraphernalia is preserved. All that law enforcers have to do is follow Section 21’s instructions. They do not even have to profoundly intellectualize their actions.

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[Per J. Leonen, Second Division].

<sup>52</sup> Id. at 11–12.

<sup>53</sup> The buy-bust operation was conducted in 2002.

An admitted deviation from Section 21's prescribed process is an admission that statutory requirements have not been observed. This admitted disobedience can only work against the prosecution's cause.

In *People v. Nandi*,<sup>54</sup> the prosecution failed to account for how the seized items were handled after seizure and prior to turn-over for examination. This Court considered the apprehending officers' lapses to be fatal errors and held that acquittal must ensue:

After a closer look, the Court finds that the linkages in the chain of custody of the subject item were not clearly established. As can be gleaned from his forequoted testimony, PO1 Collado failed to provide informative details on how the subject shabu was handled immediately after the seizure. He just claimed that the item was handed to him by the accused in the course of the transaction and, thereafter, he handed it to the investigator.

There is no evidence either on how the item was stored, preserved, labeled, and recorded. PO1 Collado could not even provide the court with the name of the investigator. He admitted that he was not present when it was delivered to the crime laboratory. It was Forensic Chemist Bernardino M. Banac, Jr. who identified the person who delivered the specimen to the crime laboratory. He disclosed that he received the specimen from one PO1 Cuadra, who was not even a member of the buy-bust team. Per their record, PO1 Cuadra delivered the letter-request with the attached seized item to the CPD Crime Laboratory Office where a certain PO2 Semacio recorded it and turned it over to the Chemistry Section.

In view of the foregoing, the Court is of the considered view that chain of custody of the illicit drug seized was compromised. Hence, the presumption of regularity in the performance of duties cannot be applied in this case.

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.

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<sup>54</sup> 639 Phil. 134-147 (2010) [Per J. Mendoza, Second Division].

With the chain of custody in serious question, the Court cannot gloss over the argument of the accused regarding the weight of the seized drug. The standard procedure is that after the confiscation of the dangerous substance, it is brought to the crime laboratory for a series of tests. The result thereof becomes one of the bases of the charge to be filed.<sup>55</sup> (Citations omitted)

What is critical in drug cases is not the bare conduct of inventory, marking, and photographing. Instead, it is the certainty that the items allegedly taken from the accused retain their integrity, even as they make their way from the accused to an officer effecting the seizure, to an investigating officer, to a forensic chemist, and ultimately, to courts where they are introduced as evidence. Hence, the four (4) links were underscored in *Nandi*:<sup>56</sup> first, from the accused to the apprehending officers; second, from the apprehending officers to the investigating officers; third, from the investigating officers to the forensic chemists; and fourth, from the forensic chemists to the courts. The endpoints of 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, their respective existences not being in question. What is prone to danger is not any of these end points but the intervening transitions or transfers 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 here failed to account for the intervening period between the supposed handover of the sachet from accused-appellant to PO3 Lim, to the marking of the sachets by SPO4 Tubo. Likewise, it absolutely failed to identify measures taken during transit from the target area to the police station to ensure the integrity of the sachets allegedly obtained and to negate any possibility of adulteration or substitution.

The prosecution rested its case without presenting SPO4 Tubo. Not that he would have singularly won the case for the prosecution, but the prosecution could have at least supported its claims about the conduct of the marking even as it was the apprehending officers, not the investigating officer, who should have done this. As it stands, even the claims of PO3 Lim and SPO1 Jacinto that the sachets were marked remained suspect.

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<sup>55</sup> Id. at 145–146.

<sup>56</sup> *People v. Nandi*, 639 Phil. 134–147 (2010) [Per J. Mendoza, Second Division].

SPO4 Tubo's testimony, too, would have shed light on the second and third links identified in *Nandi*.

The prosecution's predicament would not be so dire if accused-appellant, or his representative or counsel, and the third-party witnesses required by Section 21(1) of the Comprehensive Dangerous Drugs Act, were present during and had attested to an inventory as reduced to writing.

*People v. Garcia*<sup>57</sup> emphasized that the mere marking of seized items, unsupported by a proper physical inventory and taking of photographs, and in the absence of the persons whose presence is required by Section 21 will not justify a conviction:

Thus, other than the markings made by PO1 Garcia and the police investigator (whose identity was not disclosed), no physical inventory was ever made, and no photograph of the seized items was taken under the circumstances required by R.A. No. 9165 and its implementing rules. We observe that while there was testimony with respect to the marking of the seized items at the police station, no mention whatsoever was made on whether the marking had been done in the presence of Ruiz or his representatives. There was likewise no mention that any representative from the media and the Department of Justice, or any elected official had been present during this inventory, or that any of these people had been required to sign the copies of the inventory.<sup>58</sup> (Citations omitted)

The presence of third-party witnesses is imperative, not only during the physical inventory and taking of pictures, but also during the actual seizure of items. The requirement of conducting the inventory and taking of photographs "immediately after seizure and confiscation"<sup>59</sup> necessarily means that the required witnesses must also be present during the seizure or confiscation. This is confirmed in *People v. Mendoza*,<sup>60</sup> where the presence of these witnesses was characterized as an "insulating presence [against] the evils of switching, 'planting' or contamination".<sup>61</sup>

Similarly, P/Insp. Lim did not mention in his testimony, the relevant portions of which are quoted hereunder, that a representative from the media or the Department of Justice, or any elected public official was present during the seizure and marking of the sachets of shabu, as follows:

....

The consequences of the failure of the arresting lawmen to comply with the requirements of Section 21 (1), *supra*, were dire as far as the Prosecution was concerned. Without the insulating presence of the

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<sup>57</sup> 599 Phil. 416 (2009) [Per J. Brion, Second Division].

<sup>58</sup> *Id.* at 429.

<sup>59</sup> Rep. Act No. 9165, sec. 21, par. 1.

<sup>60</sup> *People v. Mendoza y Estrada*, 736 Phil. 749–771 (2014) [Per J. Bersamin, First Division].

<sup>61</sup> *Id.*

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.<sup>62</sup>

In complete disregard of Section 21’s unequivocal requirements, no one but police officers witnessed the supposed marking of the sachets obtained from accused-appellant.

It also does not escape our attention that accused-appellant’s apprehension was supposedly an occasioned buy-bust or entrapment operation. This operation was allegedly prompted by a tip from an informant. Acting on the tip, P/C Insp. Muksan allegedly organized a buy-bust team. All the niceties of an entrapment operation were furnished: the simulated sale was laid out, a pre-arranged signal was devised, and the marked money was prepared.<sup>63</sup>

Police officers set about what appears to have been a meticulously prepared, self-conscious operation. They had the diligence to secure preliminaries, yet they could not be bothered to secure the presence of the same insulating witnesses who would have ultimately bolstered their case. They paint a picture of themselves as a deliberate, calculated team, yet they utterly failed at observing plain, formulaic statutory requirements.

There is nothing overly complicated, demanding, or difficult in Section 21’s requirements. If at all, these requirements have so repeatedly been harped on in jurisprudence, and almost just as certainly on professional and casual exchanges among police officers, that the buy-bust team must have been so familiar with them. The buy-bust team was asked to adhere to a bare minimum. Its utter disregard for Section 21 by not even bothering to conduct an actual inventory, take pictures, or secure the presence of third-party persons to ensure the integrity of their self-proclaimed marking raises grave doubts not only on the integrity of the allegedly seized items, but even on their own.

The prosecution would have itself profit from the buy-bust team’s admitted and glaring inadequacies. This Court, the last bastion of civil liberties, must not condone this. The apprehending officers’ own

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<sup>62</sup> Id. at 767–768.

<sup>63</sup> CA rollo, p. 27.



inadequacies engender reasonable doubt and jeopardize the prosecution they initiated. Acquittal must ensue.

## VI

Section 21(1), as amended by Republic Act No. 10640, now includes a proviso that sanctions 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.<sup>64</sup>

In order that there may be conscionable non-compliance, two (2) requisites must be satisfied: first, the prosecution must specifically allege, identify, and prove “justifiable grounds”; second, it must establish that despite non-compliance, the integrity and evidentiary value of the seized drugs and/or drug paraphernalia were properly preserved. Satisfying the second requisite demands a showing of positive steps taken to ensure such preservation. Broad justifications and sweeping guarantees will not suffice.

The prosecution here completely and utterly failed to offer a justification for the buy-bust team’s deviations from Section 21(1). It would have helped its case if it offered a justification and made an allegation of the steps taken to ensure the integrity and evidentiary value of the allegedly seized sachets. Its silence leaves this Court with absolutely nothing to consider. The Comprehensive Dangerous Drugs Act allows for an open door to accommodate exceptions. The prosecution, however, has not even bothered to extend its hand and open that proverbial door.

This Court cannot be overly licentious to the prosecution and do its work for it. In the face of its failure to plead and demonstrate exceptional circumstances, there is not even room for considering exceptions.

## VII

Of equally grave concern to this Court is the miniscule amount of shabu supposedly obtained from accused-appellant. This amount is not *per se* a badge of innocence or a point justifying acquittal. However, the dubious facts of the seizure and arrest, occasioned by glaring disobedience to the Comprehensive Dangerous Drugs Act, coupled with the tendency for substitution, adulteration, and planting of fungible evidence—which is the

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<sup>64</sup> Rep. Act No. 10640 (2013), sec. 21, par. 1.

very reason for Section 21's strictness—impress upon this Court the need for extreme caution in appraising an accused's supposed guilt.

*Lescano v. People*<sup>65</sup> explained:

As this court has also previously observed in decisions involving analogous circumstances, “[t]he miniscule amount of narcotics supposedly seized . . . amplifies the doubts on their integrity.” What is involved here is all but a single sachet of 1.4 grams of plant material alleged to have been marijuana.

In *People v. Dela Cruz*, we noted that the seizure of seven (7) sachets supposedly containing 0.1405 gram of shabu (a quantity which, we emphasized, was “so miniscule it amount[ed] to little more than 7% of the weight of a five-centavo coin . . . or a one-centavo coin”) lent itself to dubiety.

In *Holgado*:

While the miniscule amount of narcotics seized is by itself not a ground for acquittal, this circumstance underscores the need for more exacting compliance with Section 21. In *Malilin v. People*, this court said that “the likelihood of tampering, loss or mistake with respect to an exhibit is greatest when the exhibit is small and is one that has physical characteristics fungible in nature and similar in form to substances familiar to people in their daily lives.”

....

Trial courts should meticulously consider the factual intricacies of cases involving violations of Republic Act No. 9165. All details that factor into an ostensibly uncomplicated and barefaced narrative must be scrupulously considered. Courts must employ heightened scrutiny, consistent with the requirement of proof beyond reasonable doubt, in evaluating cases involving miniscule amounts of drugs. These can be readily planted and tampered[.]<sup>66</sup> (Citations omitted)

This case merely involves 0.0157 grams and 0.0783 grams of alleged shabu. These are quantities so miniscule they amount to 4.7% of the weight of a one-centavo coin or 2.0 grams.<sup>67</sup> These miniscule amounts were contained in sachets, the handling of which from the target area to the police

<sup>65</sup> G.R. No. 214490, January 13, 2016  
<<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/january2016/214490.pdf>>  
[Per J. Leonen, Second Division].

<sup>66</sup> Id. at 14.

<sup>67</sup> See *People v. Holgado*, G.R. No. 207992, August 11, 2014  
<<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2014/august2014/207992.pdf>>  
[Per J. Leonen, Third Division].

station was totally bereft of safeguards. As with *Lescano*, *De Leon*, and *Holgado*, the miniscule amount of narcotics seized, coupled with the dubious circumstances of seizure, militates against the prosecution's case.

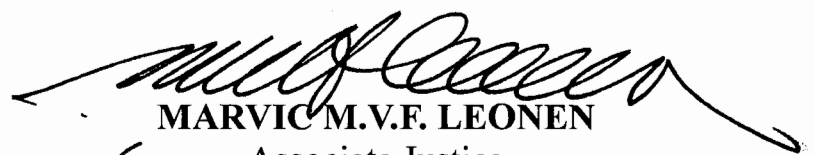
The buy-bust team's failures bring into question the integrity of the *corpus delicti* of the charge of sale of illegal drugs against accused-appellant. This leaves reasonable doubt on the guilt of accused-appellant Joshua Que. Necessarily, he must be acquitted.

**WHEREFORE**, the August 12, 2013 Decision of the Court of Appeals in CA-G.R. CR-HC No. 00681-MIN is **REVERSED** and **SET ASIDE**. Accused-appellant Joshua Que y Utuanis is **ACQUITTED** for failure of the prosecution to prove his guilt beyond reasonable doubt. He is ordered immediately **RELEASED** from detention, unless he is confined for some other lawful cause.

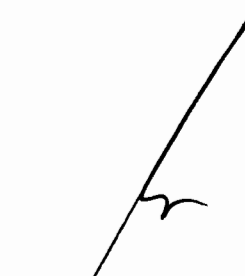
Let a copy of this decision be furnished to the Director of the Bureau of Corrections for immediate implementation. The Director of the Bureau of Corrections is directed to report to this Court, within five (5) days from receipt of this Decision, the action he has taken. Copies shall also be furnished to the Director General of the Philippine National Police and the Director General of the Philippine Drugs Enforcement Agency for their information.

Let entry of final judgement be issued immediately.

**SO ORDERED.**

  
**MARVIC M.V.F. LEONEN**  
Associate Justice

WE CONCUR:

  
**PRESBITERO J. VELASCO, JR.**  
Associate Justice  
Chairperson



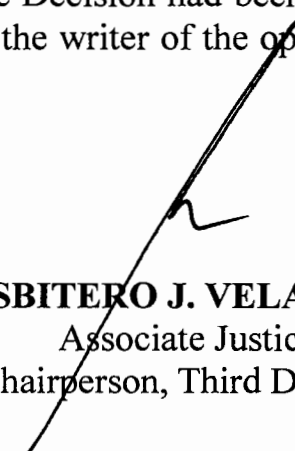
  
**LUCAS P. BERSAMIN**  
 Associate Justice

On official business  
**SAMUEL R. MARTIRES**  
 Associate Justice

  
**ALEXANDER G. GESMUNDO**  
 Associate Justice


**ATTESTATION**

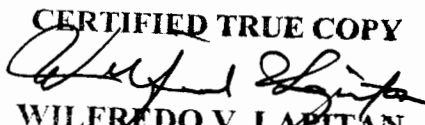
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

  
**PRESBITERO J. VELASCO, JR.**  
 Associate Justice  
 Chairperson, Third Division

**CERTIFICATION**

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

  
**MARIA LOURDES P. A. SERENO**  
 Chief Justice

**CERTIFIED TRUE COPY**  
  
**WILFREDO V. LAPITAN**  
 Division Clerk of Court  
 Third Division

MAR 23 2018