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*Wilfredo V. Lantian*  
WILFREDO V. LANTIAN  
Division Clerk of Court  
Third Division

NOV 14 2018



Republic of the Philippines  
Supreme Court  
Manila

**THIRD DIVISION**

**PEOPLE OF THE PHILIPPINES,**  
Plaintiff-Appellee,

**G.R. No. 231008**

**Present:**

PERALTA, *J.*, Chairperson,  
LEONEN,  
GISMUNDO,\*  
REYES, J., JR.,\* and  
HERNANDO, *JJ.*

- versus -

**FEDERICO SEÑERES, JR. y**  
**AJERO alias JUNIOR/WALLY,**  
Accused-Appellant.

**Promulgated:**

**November 5, 2018**

X-----*Wilfredo V. Lantian*-----X

**DECISION**

**PERALTA, J.:**

This is an appeal from the Decision,<sup>1</sup> dated November 16, 2016, of the Court of Appeals (CA) dismissing the appeal and affirming the Decision,<sup>2</sup> dated December 3, 2015, of the Regional Trial Court (RTC), Branch 70, Taguig City convicting appellant Federico Señeres, Jr. y Ajero alias Junior/Wally of violation of Section 5, Article II of Republic Act No. 9165 or the Comprehensive Dangerous Drugs Act of 2002.

The facts follow.

\* On wellness leave.

<sup>1</sup> Rollo, pp. 2-14. Penned by Associate Justice Agnes Reyes-Carpio, and concurred in by Presiding Justice Andres B. Reyes, Jr. (now a member of this Court) and Associate Justice Nina G. Antonio-Valenzuela.

<sup>2</sup> CA rollo, pp. 58-67. Penned by Presiding Judge Louis P. Acosta.

*N*

On September 14, 2011, around 12 noon, a confidential informant reported to Police Chief Inspector (*PCI*) Mihilan Abu Payao of the Taguig City Police Station Anti-Illegal Drugs that a certain Dennis was illegally selling dangerous drugs. As such, *PCI* Payao conducted a briefing for a buy-bust operation and designated Police Officer (*PO*)<sup>2</sup> Joseph E. More as the poseur-buyer and *PO*<sup>2</sup> Alexander Saez as the immediate back-up. *PO*<sup>2</sup> More was given five (5) pieces of Five Hundred Pesos (₱500.00) buy-bust money which were marked with “MP” at the right side of the typewriter image therein. *PO*<sup>2</sup> More also prepared the Pre-Operation Report and Coordination Form, and coordinated their operation with the Philippine Drug Enforcement Agency and the District Anti-Illegal Drug. Thereafter, the team went to the target area which was at the food court of the Market! Market! Mall. Upon their arrival at the said place, the confidential informant received a call from Dennis that he cannot come since he had to attend to an emergency, but will send two (2) trusted persons to replace him, who were later identified as appellant and Federico Valencia, Jr.

Thereafter, the confidential informant, who also knew appellant and Valencia, introduced *PO*<sup>2</sup> More to the two as a drug dependent who wanted to buy *shabu* from them. Appellant and Valencia asked *PO*<sup>2</sup> More to show the money. *PO*<sup>2</sup> More complied, and was instructed to give the said money to Valencia. After Valencia counted the money given by *PO*<sup>2</sup> More, the former took a sachet of *shabu* from his pocket and gave it to *PO*<sup>2</sup> More. Subsequently, *PO*<sup>2</sup> More lighted a cigarette, which was the pre-arranged signal, and immediately thereafter, *PO*<sup>2</sup> Saez approached them and held appellant, while *PO*<sup>2</sup> More held Valencia. *PO*<sup>2</sup> More instructed Valencia to empty his pocket which the latter did, and the former was able to recover the marked money and one (1) sachet of *shabu*. *PO*<sup>2</sup> More marked the sachet of *shabu* he bought from appellant (JEM-9-14-11) and the other sachet of *shabu* that was recovered from the pocket of Valencia (JEM-1-9-14-11). The Officer-in-Charge of the security division of Market! Market! Mall was asked to witness the preparation by *PO*<sup>2</sup> More of the inventory of the seized and/or bought sachets of *shabu*. Appellant, Valencia and the confiscated items were then turned over to the investigator, *PO*<sup>3</sup> Eric Valle, who prepared a Request for Drug Test, Request for Laboratory Examination, Spot Report, Booking Sheet, Information Sheet, Affidavit of Attestation, and Affidavit of Arrest. *PO*<sup>2</sup> More had custody of the recovered items from the place of arrest until they all reached the police station. *PO*<sup>3</sup> Valle brought the confiscated items to the crime laboratory and were eventually tested positive for Methamphetamine Hydrochloride.

Two (2) Informations were filed against appellant and Valencia. Both were charged with violation of Section 5, paragraph 1, Article II of R.A. No. 9165, while Valencia was also charged with violation of Section 11, paragraph 2 of the same law, thus:

## Criminal Case No. 17690-D

That, on or about the 14<sup>th</sup> day of September 2011, in the City of Taguig, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, in conspiracy with one another, without being authorized by law, did then and there willfully, unlawfully, feloniously and knowingly sell, deliver, distribute and give away to a poseur buyer, zero point eighty seven (0.87) gram contained in one (1) heat-sealed transparent plastic sachet for and in consideration of the amount of [P]2,500.00, which substance was found positive to the test for Methamphetamine Hydrochloride, also known as *shabu*, a dangerous drug, in violation of the above-cited law.

CONTRARY TO LAW.<sup>3</sup>

## Criminal Case No. 17691-D

That, on or about the 14<sup>th</sup> day of May (sic) 2011, in the City of Taguig, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did, then and there willfully, unlawfully, feloniously and knowingly possess and have under his custody and control one point twenty (1.20) grams of Methamphetamine Hydrochloride, also known as "*shabu*", a dangerous drug, in violation of the above-cited law.

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

Appellant and Valencia pleaded "not guilty" during their arraignment.

The prosecution presented the testimonies of PO2 More, PO3 Valle, and PO2 Saez.

In his defense, appellant testified that on September 14, 2011, at around 3:00 p.m., he and Valencia were sitting, resting and talking to each other at the circle inside Market! Market! Mall when two (2) armed men in civilian clothes approached and introduced themselves as policemen. He later learned that the two (2) armed men were PO2 Saez and PO2 More. Thereafter, appellant and Valencia were made to stand, handcuffed, and arrested for being suspicious-looking. They were frisked, but nothing was found in their possession. They were then brought to the police station for further investigation. Appellant then heard one of the policemen say that they were an "accomplishment" even if their supposed operation failed. They were made to sit in front of a long white table with two (2) sheets of bond paper and attached with the latter were Three Thousand Five Hundred Pesos (P3,500.00). Later on, their pictures were taken and they were brought to an inquest proceeding where they learned of the cases filed against them.

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<sup>3</sup> Records, p. 1.

<sup>4</sup> *Id.* at 25.



Meanwhile, on July 7, 2014, Valencia died, and the charges against him were dismissed pursuant to Article 89 of the Revised Penal Code.

On December 3, 2015, the RTC rendered its Decision finding appellant guilty beyond reasonable doubt of the charge against him, thus:

WHEREFORE, premises considered, accused FEDERICO SEÑERES, JR. y AJERO is hereby found GUILTY beyond reasonable doubt of selling without any authority 0.87 grams of Methylamphetamine Hydrochloride or “*shabu*”, a dangerous drug, in violation of Sec. 5, Art. II of R.A. 9165 and is hereby sentenced to suffer the penalty of LIFE IMPRISONMENT and a FINE of FIVE HUNDRED THOUSAND PESOS (PHP500,000.00).

Pursuant to Section 21 of Republic Act 9165, the Evidence Custodian of the Philippine Drug Enforcement Agency (PDEA) or any of his authorized representative is hereby ordered to discharge and have custody of the sachets of “*shabu*”, subject of these cases for proper disposition.

SO ORDERED.<sup>5</sup>

Appellant elevated the case to the CA. In its Decision dated November 16, 2016, the CA dismissed the appeal, thus:

WHEREFORE, premises considered, the Decision dated December 3, 2015 of the Regional Trial Court, Branch 70 of Taguig City, finding accused-appellant Federico Señeres, Jr. y Ajero @ “Junior/Wally” GUILTY BEYOND REASONABLE DOUBT for Violation of Section 5, Article II of Republic Act No. 9165, otherwise known as The Comprehensive Dangerous Drugs Act of 2002, is hereby AFFIRMED.

SO ORDERED.<sup>6</sup>

Hence, the present appeal with the following assignment of errors:

I

THE COURT *A QUO* GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE THE PROSECUTION’S FAILURE TO ESTABLISH THE CHAIN OF CUSTODY AND INTEGRITY OF THE ALLEGEDLY SEIZED DANGEROUS DRUG.

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<sup>5</sup> CA rollo, pp. 66-67.

<sup>6</sup> Rollo, p. 13.

## II

THE COURT *A QUO* GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE THE INCONSISTENCIES IN THE TESTIMONIES OF THE PROSECUTION WITNESSES.

## III

THE COURT *A QUO* GRAVELY ERRED IN NOT FINDING THAT THE POLICE OFFICERS' FAILURE TO COMPLY WITH SECTION 21, ARTICLE II OF REPUBLIC ACT NO. 9165 COMPROMISED THE IDENTITY OF THE ALLEGED SEIZED DANGEROUS DRUGS.

## IV

THE COURT *A QUO* GRAVELY ERRED IN DISREGARDING THE ACCUSED-APPELLANT'S PLAUSIBLE DEFENSE OF DENIAL.<sup>7</sup>

According to appellant, there was a gap in the chain of custody of the seized items as it appears that in the Chain of Custody Form, the last person who had custody of the items was PO2 Roque Garcia of the Southern Police District Crime Laboratory, but he was not presented in court to testify as a witness. He also contends that the testimonies of the prosecution's witnesses were full of inconsistencies on substantial and material matters. He further claims that the police officers did not prepare an inventory in accordance with Section 21 of R.A. No. 9165; and that the same police officers did not make an effort to secure the appearance of representatives from the Department of Justice (*DOJ*) and the media, and of barangay officials, neither did they give a valid reason for their failure to comply with the requirements of the said law. Thus, according to appellant, the prosecution failed to prove his guilt beyond reasonable doubt.

The appeal is meritorious.

Under Section 5, Article II of R.A. No. 9165 or illegal sale of prohibited drugs, in order to be convicted of the said violation, the following must concur:

x x x (1) the identity of the buyer and the seller, the object of the sale and its consideration; and (2) the delivery of the thing sold and the payment therefor.<sup>8</sup>

In illegal sale of dangerous drugs, the illicit drugs confiscated from the accused comprise the *corpus delicti* of the charge.<sup>9</sup> In *People v.*

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<sup>7</sup> *Id.* at 6-7.

<sup>8</sup> *People v. Salim Ismael y Radang*, G.R. No. 208093, February 20, 2017.

<sup>9</sup> *Id.*

*Gatlabayan*,<sup>10</sup> “the Court held that it is of paramount importance that the identity of the dangerous drug be established beyond reasonable doubt; and that it must be proven with certitude that the substance bought during the buy-bust operation is exactly the same substance offered in evidence before the court. In fine, the illegal drug must be produced before the court as exhibit and that which was exhibited must be the very same substance recovered from the suspect.”<sup>11</sup> Thus, the chain of custody carries out this purpose “as it ensures that unnecessary doubts concerning the identity of the evidence are removed.”<sup>12</sup>

To ensure an unbroken chain of custody, Section 21 (1) of R.A. No. 9165 specifies:

(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[.]

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

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

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

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<sup>10</sup> 669 Phil. 240, 252 (2011).

<sup>11</sup> *People v. Mirondo*, 771 Phil. 345, 356-357 (2015).

<sup>12</sup> See *People v. Salim Ismael y Radang*, *supra* note 8.

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

In her Sponsorship Speech on Senate Bill No. 2273, which eventually became R.A. No. 10640, Senator Grace Poe admitted that "while Section 21 was enshrined in the Comprehensive Dangerous Drugs Act to safeguard the integrity of the evidence acquired and prevent planting of evidence, the application of said section resulted in the ineffectiveness of the government's campaign to stop increasing drug addiction and also, in the conflicting decisions of the courts."<sup>13</sup> Specifically, she cited that "compliance with the rule on witnesses during the physical inventory is difficult. For one, media representatives are not always available in all corners of the Philippines, especially in more remote areas. For another, there were instances where elected barangay officials themselves were involved in the punishable acts apprehended."<sup>14</sup> In addition, "[t]he requirement that inventory is required to be done in police station is also very limiting. Most police stations appeared to be far from locations where accused persons were apprehended."<sup>15</sup>

Similarly, Senator Vicente C. Sotto III manifested that in view of the substantial number of acquittals in drug-related cases due to the varying interpretations of the prosecutors and the judges on Section 21 of R.A. No. 9165, there is a need for "certain adjustments so that we can plug the loopholes in our existing law" and "ensure [its] standard implementation."<sup>16</sup> In his Co-sponsorship Speech, he noted:

Numerous drug trafficking activities can be traced to operations of highly organized and powerful local and international syndicates. The presence of such syndicates that have the resources and the capability to mount a counter-assault to apprehending law enforcers makes the requirement of Section 21(a) impracticable for law enforcers to comply

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<sup>13</sup> Journal, Senate 16<sup>th</sup> Congress 1<sup>st</sup> Session 348 (June 4, 2014).

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.* at 349.

with. It makes the place of seizure extremely unsafe for the proper inventory and photograph of seized illegal drugs.

x x x x

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

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

Non-observance of the prescribed procedures should not automatically mean that the seizure or confiscation is invalid or illegal, as long as the law enforcement officers could justify the same and could prove that the integrity and the evidentiary value of the seized items are not tainted. This is the effect of the inclusion in the proposal to amend the phrase "justifiable grounds." There are instances wherein there are no media people or representatives from the DOJ available and the absence of these witnesses should not automatically invalidate the drug operation conducted. Even the presence of a public local elected official also is sometimes impossible especially if the elected official is afraid or scared.<sup>17</sup>

The foregoing legislative intent had been taken cognizance of in a number of cases. Just recently, this Court opined in *People v. Jovencito Miranda y Tigas*:<sup>18</sup>

The Court, however, clarified that under varied field conditions, strict compliance with the requirements of Section 21 of RA 9165 may not always be possible. In fact, the Implementing Rules and Regulations (IRR) of RA 9165 – which is now crystallized into statutory law with the passage of RA 10640 – provide that the said inventory and photography may be conducted at the nearest police station or office of the apprehending team in instances of warrantless seizure, and that non-compliance with the requirements of Section 21 of RA 9165 – under justifiable grounds – will not render void and invalid the seizure and custody over the seized items so long as the integrity and evidentiary value of the seized items are

<sup>17</sup> *Id.* at 349-350.

<sup>18</sup> G.R. No. 229671, January 31, 2018.





properly preserved by the apprehending officer or team. Tersely put, the failure of the apprehending team to strictly comply with the procedure laid out in Section 21 of RA 9165 and the IRR does not *ipso facto* render the seizure and custody over the items as void and invalid, provided that the prosecution satisfactorily proves that: (a) there is justifiable ground for non-compliance; and (b) the integrity and evidentiary value of the seized items are properly preserved. In *People v. Almorfe*, the Court stressed that for the above-saving clause to apply, the prosecution must explain the reasons behind the procedural lapses, and that the integrity and value of the seized evidence had nonetheless been preserved. Also, in *People v. De Guzman*, it was emphasized that the justifiable ground for non-compliance must be proven as a fact, because the Court cannot presume what these grounds are or that they even exist.<sup>19</sup> (Citations omitted)

Under the original provision of Section 21 of R.A. No. 9165, after seizure and confiscation of the drugs, the apprehending team is required to immediately conduct a physical inventory and photograph the same in the presence of (1) the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel; (2) a representative from the media **and** (3) from the DOJ; and (4) any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof. It is assumed that the presence of these persons will guarantee “against planting of evidence and frame up,” *i.e.*, they are “necessary to insulate the apprehension and incrimination proceedings from any taint of illegitimacy or irregularity.”<sup>20</sup> Now, the amendatory law mandates that the conduct of physical inventory and photograph of the seized items must be in the presence of (1) the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel; (2) an elected public official; and (3) a representative of the National Prosecution Service **or** the media who shall sign the copies of the inventory and be given a copy thereof. In the present case, the old provisions of Section 21 of R.A. No. 9165 and its IRR shall apply since the alleged crime was committed before the amendment.

In this case, during the physical inventory and photograph of the items seized there were no representatives from the media and the DOJ, and there was no elected public official present. Instead, only a security guard of the mall witnessed the said inventory. An explanation of the absence of the required witnesses is also not provided nor was there any evidence to prove that the police officers exerted any effort to seek their presence. The absence of the witnesses has been admitted by PO3 More, thus:

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<sup>19</sup> See also *People v. Ronaldo Paz y Dionisio*, G.R. No. 229512, January 31, 2018; *People v. Philip Mamangon y Espiritu*, G.R. No. 229102, January 29, 2018; *People v. Alvin Jugo y Villanueva*, G.R. No. 231792, January 29, 2018; *People v. Niño Calibod y Henobeso*, G.R. No. 230230, November 20, 2017; *People v. Manuel Lim Ching*, G.R. No. 223556, October 9, 2017; *People v. Jonas Geronimo y Pinlac*, G.R. No. 225500, September 11, 2017; *People v. John Paul Ceralde y Ramos*, G.R. No. 228894, August 7, 2017; and *People v. Puyat Macapundag y Labao*, G.R. No. 225965, March 13, 2017.

<sup>20</sup> *People v. Ernesto Sagana y De Guzman*, G.R. No. 208471, August 2, 2017.



Q: What else did you do at the place of the arrest of the accused aside from the markings of these shabu?

A: Immediately, our team leader called the attention of the Barangay Fort Bonifacio, [M]a'am.

Q: For what, [M]r. [W]itness?

A: To witness the inventory, ma'am.

Q: You mentioned this inventory, did the barangay officials come to witness the inventory?

A: No, ma'am.

Q: What did you do?

A: After the arrest of these two (2) men, the people in Market-[M]arket were panicking so we just asked the security of Market-Market to witness the inventory, ma'am.<sup>21</sup>

Q: Mr. Witness, it appears on page 16 of the transcript of stenographic notes that after the buy-bust operation, the team leader called the attention of the Barangay Fort Bonifacio, is that correct?

A: Yes, Ma'am.

Q: So, what you are saying is that your team proceeded with the operation without first securing the attendance of the proper barangay officials?

A: By that time, not yet, Ma'am.

Q: And you also did not secure the presence of any media or DOJ representative, is that correct?

A: Our team leader exerted effort, Ma'am.

Q: But is there any documentary evidence to prove that your team actually tried to secure their appearance?

A: None, Ma'am.

Q: Mr. Witness, it appears on the inventory that the signature of security OIC Ronnie Aseron. Is he a media representative?

A: No, Ma'am.

Q: Is he a DOJ representative?

A: No, Ma'am.

Q: Actually, he is not even related to this case?

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<sup>21</sup> TSN, October 16, 2012, pp. 16-17.



A: No. Ma'am.<sup>22</sup>

In *People v. Angelita Reyes, et al.*,<sup>23</sup> this Court enumerated certain instances where the absence of the required witnesses may be justified, thus:

x x x It must be emphasized that the prosecution must be able to prove a justifiable ground in omitting certain requirements provided in Sec. 21 such as, but not limited to the following: 1) media representatives are not available at that time or that the police operatives had no time to alert the media due to the immediacy of the operation they were about to undertake, especially if it is done in more remote areas; 2) the police operatives, with the same reason, failed to find an available representative of the National Prosecution Service; 3) the police officers, due to time constraints brought about by the urgency of the operation to be undertaken and in order to comply with the provisions of Article 125<sup>24</sup> of the Revised Penal Code in the timely delivery of prisoners, were not able to comply with all the requisites set forth in Section 21 of R.A. 9165.

The above ruling was further reiterated by this Court in *People v. Vicente Sipin y De Castro*,<sup>25</sup> thus:

The prosecution never alleged and proved that the presence of the required witnesses was not obtained for any of the following reasons, such as: (1) their attendance was impossible because the place of arrest was a remote area; (2) their safety during the inventory and photograph of the seized drugs was threatened by an immediate retaliatory action of the accused or any person/s acting for and in his/her behalf; (3) the elected official themselves were involved in the punishable acts sought to be apprehended; (4) earnest efforts to secure the presence of a DOJ or media representative and an elected public official within the period required under Article 125 of the Revised Penal Code prove futile through no fault of the arresting officers, who face the threat of being charged with arbitrary detention; or (5) time constraints and urgency of the anti-drug operations, which often rely on tips of confidential assets, prevented the law enforcers from obtaining the presence of the required witnesses even before the offenders could escape. (Citation omitted)

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<sup>22</sup> TSN, November 6, 2013, pp. 4-5.

<sup>23</sup> G.R. No. 219953, April 23, 2018.

<sup>24</sup> Art. 125. *Delay in the delivery of detained persons to the proper judicial authorities.* - The penalties provided in the next preceding article shall be imposed upon the public officer or employee who shall detain any person for some legal ground and shall fail to deliver such person to the proper judicial authorities within the period of; twelve (12) hours, for crimes or offenses punishable by light penalties, or their equivalent; eighteen (18) hours, for crimes or offenses punishable by correctional penalties, or their equivalent and thirty-six (36) hours, for crimes, or offenses punishable by afflictive or capital penalties, or their equivalent.

In every case, the person detained shall be informed of the cause of his detention and shall be allowed upon his request, to communicate and confer at any time with his attorney or counsel. (As amended by E.O. Nos. 59 and 272, Nov. 7, 1986 and July 25, 1987, respectively).

<sup>25</sup> G.R. No. 224290, June 11, 2018.

Earnest effort to secure the attendance of the necessary witnesses must also be proven as held in *People v. Wilson Ramos y Cabanatan*,<sup>26</sup> thus:

It is well to note that the absence of these required witnesses does not *per se* render the confiscated items inadmissible. However, a justifiable reason for such failure or a showing of any genuine and sufficient effort to secure the required witnesses under Section 21 of RA 9165 must be adduced. In *People v. Umipang*, the Court held that the prosecution must show that earnest efforts were employed in contacting the representatives enumerated under the law for “a sheer statement that representatives were unavailable without so much as an explanation on whether serious attempts were employed to look for other representatives, given the circumstances is to be regarded as a flimsy excuse.” Verily, mere statements of unavailability, absent actual serious attempts to contact the required witnesses are unacceptable as justified grounds for non-compliance. These considerations arise from the fact that police officers are ordinarily given sufficient time – beginning from the moment they have received the information about the activities of the accused until the time of his arrest – to prepare for a buy-bust operation and consequently, make the necessary arrangements beforehand knowing fully well that they would have to strictly comply with the set procedure prescribed in Section 21 of RA 9165. As such, police officers are compelled not only to state the reasons for their non-compliance, but must in fact, also convince the Court that they exerted earnest efforts to comply with the mandated procedure, and that under the given circumstances, their actions were reasonable. (Citations omitted)

Certainly, the prosecution bears the burden of proof to show valid cause for non-compliance with the procedure laid down in Section 21 of R.A. No. 9165, as amended.<sup>27</sup> It has the positive duty to demonstrate observance thereto in such a way that, during the proceedings before the trial court, it must initiate in acknowledging and justifying any perceived deviations from the requirements of the law.<sup>28</sup> Its failure to follow the mandated procedure must be adequately explained and must be proven as a fact, in accordance with the rules on evidence. The rules require that the apprehending officers do not simply mention a justifiable ground, but also clearly state this ground in their sworn affidavit, coupled with a statement on the steps they took to preserve the integrity of the seized item.<sup>29</sup> A stricter adherence to Section 21 of R.A. No. 9165 is required where the quantity of illegal drugs seized is miniscule since it is highly susceptible to planting, tampering, or alteration.<sup>30</sup>

<sup>26</sup> G.R. No. 233744, February 28, 2018.

<sup>27</sup> See *People v. Puyat Macapundag y Labao*, *supra* note 19.

<sup>28</sup> See *People v. Jovencito Miranda y Tigas*, *supra* note 18; *People v. Ronaldo Paz y Dionisio*, *supra* note 19; *People v. Philip Mamangon y Espiritu*, *supra* note 19; and *People v. Alvin Jugo y Villanueva*, *supra* note 19.

<sup>29</sup> *People v. Saragena*, G.R. No. 210677, August 23, 2017.

<sup>30</sup> See *People v. Abelarde*, G.R. No. 215713, January 22, 2018; *People v. Macud*, G.R. No. 219175, December 14, 2017; *People v. Arposeple*, G.R. No. 205787, November 22, 2017; *Aparente v. People*, G.R. No. 205695, September 27, 2017; *People v. Cabellon*, G.R. No. 207229, September 20, 2017; *People v. Saragena, id.*; *People v. Saunar*, G.R. No. 207396, August 9, 2017; *People v. Ernesto Sagana y De*

As a reminder, this Court, in *People v. Romy Lim*,<sup>31</sup> laid down a guideline, which is prospective in nature, that must be followed in order that the provisions of Section 21 of R.A. No. 9165 must be well-enforced and duly proven in courts, thus:

1. In the sworn statements/affidavits, the apprehending/seizing officers must state their compliance with the requirements of Section 21 (1) of R.A. No. 9165, as amended, and its IRR.
2. In case of non-observance of the provision, the apprehending/seizing officers must state the justification or explanation therefor as well as the steps they have taken in order to preserve the integrity and evidentiary value of the seized/confiscated items.
3. If there is no justification or explanation expressly declared in the sworn statements or affidavits, the investigating fiscal must not immediately file the case before the court. Instead, he or she must refer the case for further preliminary investigation in order to determine the (non) existence of probable cause.
4. If the investigating fiscal filed the case despite such absence, the court may exercise its discretion to either refuse to issue a commitment order (or warrant of arrest) or dismiss the case outright for lack of probable cause in accordance with Section 5, Rule 112, Rules of Court. (Citation omitted)

There being no justifiable reason in this case for the non-compliance of Section 21 of R.A. No. 9165, this Court finds it necessary to acquit the appellant for failure of the prosecution to prove his guilt beyond reasonable doubt.

**WHEREFORE**, premises considered, the Decision dated November 16, 2016 of the Court of Appeals in CA-G.R. CR-HC No. 07933, dismissing the appeal and affirming the Decision dated December 3, 2015 of the Regional Trial Court, Branch 70, Taguig City, convicting appellant Federico Señeres, Jr. y Ajero alias Junior/Wally of violation of Section 5, Article II of Republic Act No. 9165, is **REVERSED and SET ASIDE**. Appellant 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 any other lawful cause. Let entry of final judgment be issued immediately.

Let a copy of this Decision be furnished the Director of the Bureau of Corrections, New Bilibid Prison, Muntinlupa City, for immediate

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*Guzman*, supra note 20; *People v. Segundo*, G.R. No. 205614, July 26, 2017; and *People v. Jaafar*, G.R. No. 219829, January 18, 2017.

<sup>31</sup> G.R. No. 231989, September 4, 2018.

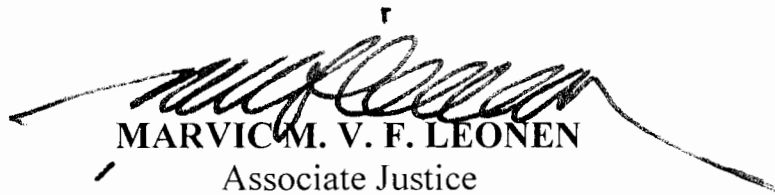
implementation. Said Director is ordered to report to this Court within five (5) working days from receipt of this Decision the action he has taken.

**SO ORDERED.**



**DIOSDADO M. PERALTA**  
Associate Justice

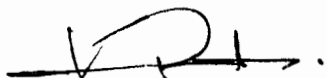
**WE CONCUR:**



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

On wellness leave  
**ALEXANDER G. GESMUNDO**  
Associate Justice

On wellness leave  
**JOSE C. REYES, JR.**  
Associate Justice



**RAMON PAUL L. HERNANDO**  
Associate Justice

**ATTESTATION**

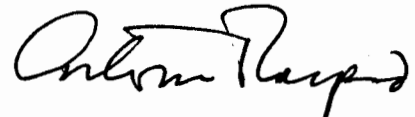
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



**DIOSDADO M. PERALTA**  
Associate Justice  
Chairperson, Third Division

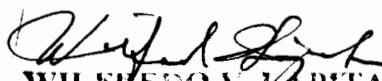
**CERTIFICATION**

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.



**ANTONIO T. CARPIO**  
Senior Associate Justice  
(Per Section 12, Republic Act  
No. 296, The Judiciary Act of  
1948, as amended)

**CERTIFIED TRUE COPY**



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

NOV 14 2018