

Republic of the Philippines  
**Supreme Court**  
 Manila

**SECOND DIVISION**

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

**G.R. No. 212170**

Present:

- versus -

CARPIO, J., *Chairperson*,  
 PERLAS-BERNABE,  
 CAGUIOA,  
 J. REYES, JR., and  
 LAZARO-JAVIER, JJ.

**ALEX ESCARAN y TARIMAN,**  
 Accused-Appellant.

Promulgated:

19 JUN 2019

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**DECISION**

**CAGUIOA, J.:**

Before the Court is an ordinary appeal<sup>1</sup> filed by accused-appellant Alex Escaran y Tariman (Escaran) assailing the Decision<sup>2</sup> dated August 30, 2013 of the Court of Appeals, Twentieth Division, Cebu City (CA), in CA-G.R. CEB CR-HC No. 01275, which affirmed with modification the Joint Judgment<sup>3</sup> dated October 18, 2010 of the Regional Trial Court (RTC), Branch 28, 7<sup>th</sup> Judicial Region, Mandaue City in Criminal Case Nos. DU-11130 and DU-11131, finding Escaran guilty beyond reasonable doubt of the crimes punished under Sections 5 and 11, Article II of Republic Act No. (RA) 9165,<sup>4</sup> otherwise known as the *Comprehensive Dangerous Drugs Act of 2002*.

**The Facts**

In two separate Informations<sup>5</sup> both dated March 23, 2004, Escaran was charged with illegal sale and illegal possession of dangerous drugs

<sup>1</sup> See Notice of Appeal dated October 2, 2013; CA *rollo*, pp. 123-125.

<sup>2</sup> CA *rollo*, pp. 99-122. Penned by Associate Justice Ma. Luisa C. Quijano-Padilla, with Associate Justices Ramon Paul L. Hernando (now a Member of this Court) and Carmelita Salandanan-Manahan concurring.

<sup>3</sup> Id. at 49-57. Penned by Judge Marilyn Lagura-Yap.

<sup>4</sup> AN ACT INSTITUTING THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002, REPEALING REPUBLIC ACT NO. 6425, OTHERWISE KNOWN AS THE DANGEROUS DRUGS ACT OF 1972, AS AMENDED, PROVIDING FUNDS THEREFOR, AND FOR OTHER PURPOSES (2002).

<sup>5</sup> Records (Crim. Case No. DU-11130), pp. 1-2; records (Crim. Case No. DU-11131), pp. 1-2.

defined and punished under Sections 5 and 11, respectively, Article II of RA 9165. The accusatory portions of the Informations read as follows:

Criminal Case No. DU-11130 (For violation of Section 5):

That on or about the 21<sup>st</sup> day of March, 2004 in the City of Mandaue, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with deliberate intent and without being authorized by law, did then and there wilfully, unlawfully and feloniously sell, deliver and give away to another two (2) packets containing “shabu” or methylamphetamine hydrochloride having a total weight of 0.06 gram, a dangerous drug.

CONTRARY TO LAW.<sup>6</sup>

Criminal Case No. DU-11131 (For violation of Section 11):

That on or about the 21<sup>st</sup> day of March, 2004, in the City of Mandaue, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without authority of law, did then and there wilfully, unlawfully and feloniously have in his possession, custody and control four (4) heat-sealed transparent plastic packet[s] of white crystalline substance having a combined weight of 0.08 gram which when subjected to laboratory examination gave positive results for the presence of methylamphetamine hydrochloride, a dangerous drug.

CONTRARY TO LAW.<sup>7</sup>

When arraigned, Escaran pleaded not guilty to both charges against him.<sup>8</sup> During the pre-trial, the court dispensed with the testimony of Police Senior Inspector, Forensic Chemical Officer Mutchit G. Salinas (PSI Salinas) after the parties stipulated on the following:

1. The complaining policemen are all members of the Mandaue Police Office, assigned to the DEU;
2. Escaran was arrested on March 21, 2004 at about 9:20 in the evening at Ibabao, Mandaue City;
3. The existence of Chemistry Reports D-523-2004 and D-552-2004 as well as the expertise of PSI Salinas;
4. The Pre-Operation Report refers to March 21, 2004, 2000H-2200H, or from 8:00 to 10:00 in the evening.<sup>9</sup>

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<sup>6</sup> Id. at 1.

<sup>7</sup> Records (Crim. Case No. DU-11131), p. 1.

<sup>8</sup> CA *rollo*, p. 101.

<sup>9</sup> Id. at 101-102.

Thereafter, trial ensued. The prosecution presented PO1 Roque Veraño, Jr. (PO1 Veraño) and PO1 Bimon Montebon (PO1 Montebon) whose testimonies were summarized by the CA as follows:

On March 21, 2004[,] at around 7:00 o'clock in the evening the confidential agent of the Drug Enforcement Unit of Mandaue made a phone call to Police Chief [Inspector Juanito] Enguerra [PCI Enguerra,] informing the latter that [Escaran] is selling shabu at Sitio Sapa-Sapa, Ibabao, Mandaue City. Their conversation lasted for an hour and a half. On the basis of the said information, PCI Enguerra directed PO1 Montebon and PO1 Veraño together with their informant to conduct a surveillance at Sitio Sapa-Sapa at around 8:00 o'clock in the evening, wherein the said policemen ascertained that the information they received was accurate.

Upon their return at the police station, PCI Enguerra conducted a briefing attended by the confidential agent, PO1 Montebon, PO1 Veraño and SPO4 Tumakay wherein the group hatched a plan to conduct a buy bust operation against [Escaran]. PO1 Veraño was designated as the poseur-buyer and he was given x x x pre-marked two x x x P100.00 peso bills furnished by SPO1 Enri[q]uez who affixed his signature on the upper left portion of the said bills.

After their briefing, at around 9:00 o'clock in the evening, on board the service vehicle, Mobile 9, PO1 Montebon, PO1 Veraño and SPO1 Enriquez together with the confidential agent went to the designated area. Twenty minutes after the group arrived, they were met by [Escaran,] who asked PO1 Veraño if he would be interested to buy shabu to which the latter answered in the affirmative. PO1 Veraño then told [Escaran] that he would buy worth P200.00[;] thereafter the latter handed to the former two [2] packs of shabu.

After that, PO1 Veraño and PO1 Montebon introduced themselves as policemen and [arrested Escaran] who was thereafter appraised of his constitutional rights. When [Escaran] was frisked by PO1 Montebon, the policeman was able to recover an additional four [4] packs of shabu from the right front pocket of [Escaran]'s trousers.

The police officers then brought [Escaran] to the police station. The two [2] packets from the sale were then marked as "Alex-1" and "Alex-2" while the four [4] packets obtained from the search were marked as "AET-1" to "AET-4". The contraband were then brought to the PNP Crime Laboratory for examination.

The Chemistry Report [p]repared by [PSI Salinas] on the items seized from [Escaran] yielded positive results for shabu.<sup>10</sup>

For his defense, Escaran denied the charges and narrated that:

x x x At around 5:00 o'clock in the afternoon of March 21, 2004, [Escaran] was told by his co-worker Arman to wait for him by the bamboo groove near his house so that they could go together to work. They were supposed to report at 9:30 o'clock (*sic*) in the evening at the back portion of

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<sup>10</sup> Id. at 102-103.

Sitio Sapa-Sapa. [Escaran] had been under the employ of one Titing as a butcher of chickens for the past four [4] years prior to his arrest. Two minutes into waiting for Arman, the latter arrived and told [Escaran] to wait further as he was going to sharpen his knife and if their other companions would arrive before him [Arman] then [Escaran] should go with them.

[Escaran] decided to wait further as their other companions were not yet in sight. A while later he noticed four [4] persons who approached him and asked where they could buy shabu. [Escaran] replied that he does not sell shabu and directed the persons to go further back out and he saw the group heading towards the store. Thereafter, one of the persons in the group came back to him and asked him to accompany them because they were not familiar with the place. [Escaran] declined and said that he was waiting for his companions. The person left him alone. Still, no companions in sight, another person from the group was able to come back and asked him again to accompany them but then again he declined. This infuriated the person who retorted "Why will you not accompany us? We are just requesting you to accompany us."

Undaunted, another one from the group whom he identified as Montebon introduced himself saying "Bay, we are policemen. You just accompany us where we can buy shabu." But [Escaran] was adamant saying he could not do that because he was waiting for his companions. Montebon then replied[,] "It's up to you, you might regret it", after he said that he returned to his companions.

The four of them, then approached him and ordered him to stand up. [Escaran] asked why he was ordered around but they retorted that he was hard-headed. Suddenly, one of the four people drew his gun and aimed at [Escaran] saying[,] "If you only had accompanied us, this [would] not have happened to you.["] Thereafter, he was dragged in a corner and was told to board the vehicle. He was later on brought to the Command Office where he was asked to point to them [policemen] the house of a certain Dennis and was even told that should he supply them the information, the four will set him free. Not knowing any person in the name of Dennis, he could not give them an answer.

They left him for a while in a small room and a few short minutes later, they brought him outside and made him sit on a table near the computer and was told: "do you see those packs? Those 6 packs will be yours if you will not tell us." He pleaded to them and told them that he was still on probation but they were just laughing at him. He was later on locked up and brought to Precinct 1.<sup>11</sup>

### *Ruling of the RTC*

The RTC found Escaran guilty beyond reasonable doubt of violation of Sections 5 and 11 of RA 9165 and sentenced him to life imprisonment and an indeterminate penalty of twelve (12) years as minimum term to twelve (12) years and one (1) day as maximum term, respectively.<sup>12</sup> The RTC found that all the elements of illegal sale and illegal possession of dangerous drugs were

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<sup>11</sup> Id. at 104-106.

<sup>12</sup> Id. at 56-57.

established by the prosecution and that there was regularity in the performance of official duties by the members of the buy-bust team.<sup>13</sup> The RTC further held that Escaran's defense of denial is not sufficient to overcome the positive assertion of the police officers that Escaran was caught selling *shabu*.<sup>14</sup>

### *Ruling of the CA*

On appeal, the CA, in the assailed Decision,<sup>15</sup> sustained Escaran's conviction. The CA agreed with the RTC that all the elements of the crimes charged were established by the straightforward and categorical declaration of the prosecution's witnesses, especially since the defense did not adduce any evidence showing that the police officers in the buy-bust operation had any ill motive to make false charges against Escaran.<sup>16</sup>

The CA further held that the failure of the police officers to strictly comply with the provisions of Section 21 of RA 9165 is of no moment since the integrity and evidentiary value of the drugs seized from Escaran were preserved.<sup>17</sup>

The CA, however, modified the penalties imposed upon Escaran that in Criminal Case No. DU-11130, Escaran was further ordered to pay ₱500,000.00 as fine; while in Criminal Case No. DU-11131, Escaran was sentenced to an indeterminate penalty of twelve (12) years and one (1) day to twenty (20) years with all the accessory penalties provided by law and ordered to pay ₱300,000.00 as fine.<sup>18</sup>

Hence, the instant appeal.

### **Issue**

Whether the CA erred in sustaining Escaran's conviction for violation of Sections 5 and 11, Article II of RA 9165.

### **The Court's Ruling**

The appeal is meritorious. Escaran is accordingly acquitted.

In cases involving dangerous drugs, the confiscated drug constitutes the very *corpus delicti* of the offense<sup>19</sup> and the fact of its existence is vital to sustain a judgment of conviction.<sup>20</sup> It is essential, therefore, that the identity

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<sup>13</sup> Id. at 54-56.

<sup>14</sup> Id. at 56.

<sup>15</sup> Id. at 99-122.

<sup>16</sup> Id. at 109-117.

<sup>17</sup> Id. at 117-119.

<sup>18</sup> Id. at 121.

<sup>19</sup> *People v. Sagana*, G.R. No. 208471, August 2, 2017, 834 SCRA 225, 240.

<sup>20</sup> *Derilo v. People*, 784 Phil. 679, 686 (2016).

and integrity of the seized drug be established with moral certainty.<sup>21</sup> Thus, in order to obviate any unnecessary doubt on its identity, the prosecution has to show an unbroken chain of custody over the same and account for each link in the chain of custody from the moment the drug is seized up to its presentation in court as evidence of the crime.<sup>22</sup>

In this regard, Section 21,<sup>23</sup> Article II of RA 9165, the applicable law at the time of the commission of the alleged crime, outlines the procedure which the police officers should strictly follow to preserve the integrity of the confiscated drugs and/or paraphernalia used as evidence. The provision requires that: (1) the seized items be inventoried and photographed **immediately after seizure or confiscation**; and (2) the physical inventory and photographing must be done **in the presence of (a) the accused or his/her representative or counsel, (b) an elected public official, (c) a representative from the media, and (d) a representative from the Department of Justice (DOJ)**, all of whom shall be required to sign the copies of the inventory and be given a copy of the same and the seized drugs must be turned over to the Philippine National Police (PNP) Crime Laboratory within twenty-four (24) hours from confiscation for examination.<sup>24</sup>

The phrase “immediately after seizure and confiscation” means that the physical inventory and photographing of the drugs were intended by the law to be made immediately after, or at the place of apprehension. It is only when the same is not practicable that the Implementing Rules and Regulations (IRR) of RA 9165 allow the inventory and photographing to be done as soon as the buy-bust team reaches the nearest police station or the nearest office of the apprehending officer/team. In this connection, this also means that the three (3) required witnesses should already be physically present at the time of apprehension — **a requirement that can easily be complied with by the buy-bust team considering that the buy-bust operation is, by its nature, a planned activity**. Verily, a buy-bust team normally has enough time to gather and bring with them the said witnesses.<sup>25</sup>

<sup>21</sup> See *People v. Alvaro*, G.R. No. 225596, January 10, 2018, p. 9.

<sup>22</sup> *People v. Manansala*, G.R. No. 229092, February 21, 2018, p. 5.

<sup>23</sup> The said section reads as follows:

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

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

<sup>24</sup> See RA 9165, Art. II, Sec. 21(1) and (2).

<sup>25</sup> *People v. Callejo*, G.R. No. 227427, June 6, 2018, p. 10.

The Court, however, has clarified that under varied field conditions, strict compliance with the requirements of Section 21 of RA 9165 may not always be possible;<sup>26</sup> and, the failure of the apprehending team to strictly comply with the procedure laid out in Section 21 of RA 9165 does not *ipso facto* render the seizure and custody over the items void and invalid. However, this is with the caveat that the prosecution still needs to satisfactorily prove that: **(a) there is justifiable ground for the non-compliance; and (b) the integrity and evidentiary value of the seized items are properly preserved.**<sup>27</sup> It has been repeatedly emphasized by the Court that the prosecution has the positive duty to explain the reasons behind the procedural lapses.<sup>28</sup> Without any justifiable explanation, which must be proven as a fact,<sup>29</sup> the evidence of the *corpus delicti* is unreliable, and the acquittal of the accused should follow on the ground that his guilt has not been shown beyond reasonable doubt.<sup>30</sup>

*The police officers failed to comply with the mandatory requirements under Section 21.*

In this case, the Court finds that the police officers failed to comply with the prescribed chain of custody rule, thereby putting into question the identity and evidentiary value of the items purportedly seized from Escaran.

*First*, while PO1 Montebon<sup>31</sup> and PO1 Veraño<sup>32</sup> narrated that SPO1 Enriquez marked the items recovered from Escaran, there is no evidence as to when and where the seized drugs were marked and whether the marking was made in Escaran's presence. In *People v. Ameril*,<sup>33</sup> the Court stressed that marking of the seized items should be done immediately upon seizure and in the presence of the accused to ensure that they are the same items that enter the chain and are eventually the ones offered in evidence.

*Second*, PO1 Veraño admitted that after the alleged sale of drugs was consummated and Escaran was arrested and apprised of his constitutional rights, the latter was immediately brought to the police station for interrogation. The buy-bust team did not make any inventory nor did it take

<sup>26</sup> See *People v. Sanchez*, 590 Phil. 214, 234 (2008).

<sup>27</sup> *People v. Ceralde*, G.R. No. 228894, August 7, 2017, 834 SCRA 613, 625.

<sup>28</sup> *People v. Dela Victoria*, G.R. No. 233325, April 16, 2018, p. 6; *People v. Crispo*, G.R. No. 230065, March 14, 2018, p. 8; *People v. Año*, G.R. No. 230070, March 14, 2018, p. 6; *People v. Lumaya*, G.R. No. 231983, March 7, 2018, p. 8; *People v. Ramos*, G.R. No. 233744, February 28, 2018, p. 6; *People v. Magsano*, G.R. No. 231050, February 28, 2018, p. 7; *People v. Manansala*, G.R. No. 229092, February 21, 2018, p. 7; *People v. Miranda*, G.R. No. 229671, January 31, 2018, p. 7; *People v. Dionisio*, G.R. No. 229512, January 31, 2018, p. 9; *People v. Jugo*, G.R. No. 231792, January 29, 2018, p. 7; *People v. Mamangon*, G.R. No. 229102, January 29, 2018, p. 7; *People v. Alvaro*, G.R. No. 225596, January 10, 2018, p. 7; *People v. Almorfe*, 631 Phil. 51, 60 (2010).

<sup>29</sup> See *People v. De Guzman*, 630 Phil. 637, 649 (2010).

<sup>30</sup> *People v. Gonzales*, 708 Phil. 121, 123 (2013).

<sup>31</sup> See TSN, April 14, 2005, p. 8.

<sup>32</sup> See TSN, April 12, 2005, pp. 28-29.

<sup>33</sup> 799 Phil. 484, 494 (2016).

photographs of the items seized from Escaran. Pertinent portions of PO1 Veraño's testimony read as follows:

Q After the arrest of the accused, what happened next?

A We brought him to [t]he Mandaue City Police Office and interrogated him.<sup>34</sup>

x x x x

Q Was there an inventory made of the 6 packs?

A None, but a report was made.

Q What report are you referring to?

A Report for Crime Laboratory.

Q That is a request.

A Yes, request.

Q You know that when you arrest somebody for selling or for possession, you have to make an inventory of the items seized or confiscated from him in the presence of the accused or his representative?

A No, we already coordinated with the PDEA.<sup>35</sup>

x x x x

Q You wouldn't know if a photograph was taken of the items seized?

A No, but there was a picture of the accused.

Q Only a picture of the accused?

A Yes.<sup>36</sup>

The lack of inventory and photographs of the seized items was corroborated by PO1 Montebon, who testified as follows:

Q You immediately brought him [Escaran] to your office and placed him under investigation and booked him?

A [Y]es.

Q There was an inventory made?

A No.

Q No photographs taken?

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<sup>34</sup> TSN, April 12, 2005, p. 10.

<sup>35</sup> Id. at 29-30.

<sup>36</sup> Id. at 31.



- A The photograph of Escaran was taken.
- Q Photographs of items which you said were confiscated from him?
- A No.<sup>37</sup>

*Third*, none of the three (3) required witnesses under Section 21 was present at the place of seizure and apprehension and even at the police station. It bears emphasis that the presence of the required witnesses at the time of the apprehension and inventory is mandatory, and that the law imposes the said requirement because their presence serves an essential purpose. In *People v. Tomawis*,<sup>38</sup> the Court elucidated on the purpose of the law in mandating the presence of the required witnesses as follows:

The presence of the witnesses from the DOJ, media, and from public elective office is necessary to protect against the possibility of planting, contamination, or loss of the seized drug. Using the language of the Court in *People v. Mendoza*,<sup>39</sup> without the *insulating presence* of the representative from the media or the DOJ and any elected public official during the seizure and marking of the drugs, the evils of switching, “planting” or contamination of the evidence that had tainted the buy-busts conducted under the regime of RA 6425 (Dangerous Drugs Act of 1972) again reared their ugly heads as to negate the integrity and credibility of the seizure and confiscation of the subject sachet that was evidence of the *corpus delicti*, and thus adversely affected the trustworthiness of the incrimination of the accused.

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

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

To restate, the presence of the three witnesses at the time of seizure and confiscation of the drugs must be secured and complied with at the time of the warrantless arrest; such that they are required to be at or near the intended place of the arrest so that they can be ready to witness the inventory and photographing of the seized and confiscated drugs “immediately after seizure and confiscation”.<sup>40</sup> (Emphasis and underscoring in the original)

<sup>37</sup> TSN, April 18, 2005, p. 14.

<sup>38</sup> G.R. No. 228890, April 18, 2018.

<sup>39</sup> 736 Phil. 749, 764 (2014).

<sup>40</sup> *People v. Tomawis*, supra note 38, at 11-12.



Indeed, case law states that the procedure enshrined in Section 21, Article II of **RA 9165 is a matter of substantive law, and cannot be brushed aside as a simple procedural technicality; or worse, ignored as an impediment to the conviction of illegal drug suspects.**<sup>41</sup> For indeed, however noble the purpose or necessary the exigencies of the campaign against illegal drugs may be, it is still a governmental action that must always be executed within the boundaries of law.<sup>42</sup>

*The saving clause does not apply to this case.*

As earlier stated, following the IRR of RA 9165, the courts may allow a deviation from the mandatory requirements of Section 21 in exceptional cases, where the following requisites are present: **(1) the existence of justifiable grounds to allow departure from the rule on strict compliance; and (2) the integrity and the evidentiary value of the seized items are properly preserved by the apprehending team.**<sup>43</sup> If these elements are present, the seizure and custody of the confiscated drug shall not be rendered void and invalid regardless of the failure to strictly comply with the mandatory requirements of Section 21. It has also been emphasized that the State bears the burden of proving the justifiable cause.<sup>44</sup> Thus, for the said saving clause to apply, the prosecution must first recognize the lapse or lapses on the part of the buy-bust team and justify or explain the same.<sup>45</sup>

In this case, the records do not show that the prosecution was able to establish a justifiable ground as to why the police officers failed to mark, photograph and inventory the seized items and why they were not able to secure the presence of the required witnesses. It must be noted that the police officers in this case received the information that Escaran was allegedly peddling drugs at around 7:00 in the evening and was even able to conduct a surveillance at the place identified by the confidential agent before the buy-bust was operationalized at around 9:00 in the evening.<sup>46</sup> Thus, the police officers had more than ample time to comply with the requirements established by law; and yet they did not exert even the slightest effort to secure the attendance of the required witnesses.

Moreover, contrary to the findings of the CA, the records reveal that **gaps exist** in the chain of custody of the seized items which create reasonable doubt as to the identity and integrity thereof. To establish an unbroken chain of custody, “[i]t is necessary that every person who touched the seized item describe how and from whom he or she received it; where and what happened to it while in the witness’ possession; its condition when

<sup>41</sup> *Gamboa v. People*, 799 Phil. 584, 597 (2016), citing *People v. Umipang*, 686 Phil. 1024, 1038-1039 (2012).

<sup>42</sup> *Id.* at 597.

<sup>43</sup> *People v. Callejo*, supra note 25, at 9-10, citing *People v. Cayas*, 789 Phil. 70, 79-80 (2016).

<sup>44</sup> *People v. Beran*, 724 Phil. 788, 822 (2014).

<sup>45</sup> *People v. Reyes*, 797 Phil. 671, 690 (2016).

<sup>46</sup> TSN, April 18, 2005, pp. 3-10.

received and at the time it was delivered to the next link in the chain.”<sup>47</sup> This requirement was, however, not complied in this case.

PO1 Veraño testified that the six (6) plastic sachets confiscated from Escaran were turned over to PCI Enguerra, who later on delivered the same to SPO1 Enriquez to prepare the request for laboratory examination.<sup>48</sup> Further, the Request for Laboratory examination showed that the confiscated drugs were delivered to the crime laboratory by PO1 Veraño.<sup>49</sup> However, the Court does not see from the records the details on how the specimens were handled from the time they were handed to PCI Enguerra to the time they were delivered to SPO1 Enriquez until they were returned to PO1 Veraño and submitted to PSI Salinas for examination. The testimonies of PO1 Veraño and PO1 Montebon were sorely lacking on these details.

Similarly, PSI Salinas did not testify on how she handled the seized items during examination and before it was transferred to the court — which testimony is required to ensure that there was no change in the condition of the seized drug and no opportunity for someone not in the chain to have possession while in her custody. Instead of the forensic chemist turning over the substance to the court and testifying, the parties merely made stipulations, which do not in any way prove how the drugs were handled by said chemist. In other words, the records do not indicate how the identity and integrity of seized drugs were preserved from the time they were confiscated from Escaran to the time they were turned over to the next responsible person until they were offered in court as evidence.

As the seized drugs themselves are the *corpus delicti* of the crime charged, it is of utmost importance that there be no doubt or uncertainty as to their identity and integrity. The State, and no other party, has the responsibility to explain the lapses in the procedures taken to preserve the chain of custody of the dangerous drugs. Without the explanation by the State, the evidence of the *corpus delicti* is unreliable,<sup>50</sup> as in this case. Consequently, Escaran must perforce be acquitted.

*The presumption of innocence of the accused vis-à-vis the presumption of regularity in the performance of official duties.*

The right of the accused to be presumed innocent until proven guilty is a constitutionally protected right.<sup>51</sup> The burden lies with the prosecution to prove his guilt beyond reasonable doubt by establishing each and every

<sup>47</sup> *People v. Gajo*, G.R. No. 217026, January 22, 2018, p. 8.

<sup>48</sup> TSN, April 12, 2005, pp. 28-29.

<sup>49</sup> Records, pp. 38-39.

<sup>50</sup> *People v. Supat*, G.R. No. 217027, June 6, 2018, p. 16.

<sup>51</sup> 1987 CONSTITUTION, Art. III, Sec. 14(2). “In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved x x x.”

element of the crime charged in the information as to warrant a finding of guilt for that crime or for any other crime necessarily included therein.<sup>52</sup>

Judicial reliance on the presumption of regularity in the performance of official duty despite the lapses in the procedures undertaken by the agents of the law is fundamentally unsound because the lapses themselves are affirmative proofs of irregularity. In *People v. Enriquez*,<sup>53</sup> the Court held:

x x x [A]ny divergence from the prescribed procedure must be justified and should not affect the integrity and evidentiary value of the confiscated contraband. Absent any of the said conditions, the **non-compliance is an irregularity**, a red flag, that casts reasonable doubt on the identity of the *corpus delicti*.<sup>54</sup> (Emphasis supplied)

The presumption of regularity in the performance of duty cannot overcome the stronger presumption of innocence in favor of the accused.<sup>55</sup> Otherwise, a mere rule of evidence will defeat the constitutionally enshrined right to be presumed innocent.<sup>56</sup> Trial courts have been directed by the Court to apply this differentiation.<sup>57</sup>

**In this case, the presumption of regularity does not even arise because of the buy-bust team's blatant disregard of the established procedures under Section 21 of RA 9165.**

Indeed, what further militates against according the police officers in this case the presumption of regularity is the fact that even the pertinent internal anti-drug operation procedures then in force were not followed. Under the 1999 PNP Drug Enforcement Manual<sup>58</sup> (PNPDEM), the conduct of buy-bust operations required the following:

#### ANTI-DRUG OPERATIONAL PROCEDURES

x x x x

##### V. SPECIFIC RULES

x x x x

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

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

<sup>52</sup> *People v. Belocura*, 693 Phil. 476, 503-504 (2012).

<sup>53</sup> 718 Phil. 352 (2013).

<sup>54</sup> *Id.* at 366.

<sup>55</sup> *People v. Callejo*, supra note 25, at 20, citing *People v. Mendoza*, supra note 39, at 770.

<sup>56</sup> *Id.*, citing *People v. Mendoza*, *id.*

<sup>57</sup> *Id.*, citing *People v. Mendoza*, *id.*

<sup>58</sup> PNPM-D-O-3-1-99 [NG], the precursor anti-illegal drug operations manual prior to the 2010 and 2014 AIDSOTF Manual.

- a. Record time of jump-off in unit's logbook;
- b. Alertness and security shall at all times be observed[;];
- c. Actual and timely coordination with the nearest PNP territorial units must be made;
- d. Area security and dragnet or pursuit operation must be provided[;];
- e. Use of necessary and reasonable force only in case of suspect's resistance[;];
- f. If buy-bust money is dusted with ultra violet powder make sure that suspect ge[t] hold of the same and his palm/s contaminated with the powder before giving the pre-arranged signal and arresting the suspects;
- g. In pre-positioning of the team members, the designated arresting elements must clearly and actually observe the negotiation/transaction between suspect and the poseur-buyer;
- h. Arrest suspect in a defensive manner anticipating possible resistance with the use of deadly weapons which maybe concealed in his body, vehicle or in a place within arm[']s reach;
- i. After lawful arrest, search the body and vehicle, if any, of the suspect for other concealed evidence or deadly weapon;
- j. Appraise suspect of his constitutional rights loudly and clearly after having been secured with handcuffs;
- k. **Take actual inventory of the seized evidence by means of weighing and/or physical counting**, as the case may be;
- l. **Prepare a detailed receipt of the confiscated evidence** for issuance to the possessor (suspect) thereof;
- m. **The seizing officer (normally the poseur-buyer) and the evidence custodian must mark the evidence** with their initials and also indicate the date, time and place the evidence was confiscated/seized;
- n. **Take photographs of the evidence while in the process of taking the inventory, especially during weighing, and if possible under existing conditions, the registered weight of the evidence on the scale must be focused by the camera**; and
- o. Only the evidence custodian shall secure and preserve the evidence in an evidence bag or in appropriate container and thereafter deliver the same to the PNP CLG for laboratory examination. (Emphasis and underscoring supplied)

The Court has ruled in *People v. Zheng Bai Hui*<sup>59</sup> that it will not presume to set an *a priori* basis on what detailed acts police authorities

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<sup>59</sup> 393 Phil. 68, 133 (2000).

might credibly undertake and carry out in their entrapment operations. However, given the police operational procedures and the fact that buy-bust is a planned operation, it strains credulity why the buy-bust team could not have ensured the presence of the required witnesses pursuant to Section 21 or at the very least marked, photographed and inventoried the seized items according to the procedures in their own operations manual.

All told, the prosecution failed to prove the *corpus delicti* of the offenses of sale and possession of illegal drugs due to the multiple unexplained breaches of procedure committed by the buy-bust team in the seizure, custody, and handling of the seized drugs. In other words, the prosecution was not able to overcome the presumption of innocence of accused-appellant Escaran.

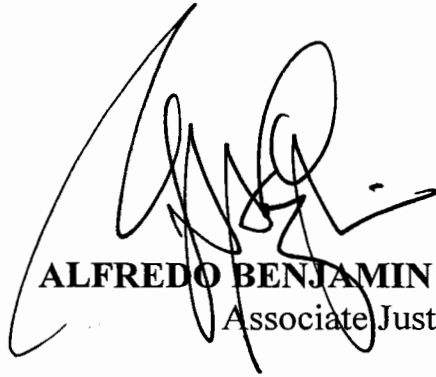
As a final note, the Court exhorts the prosecutors to diligently discharge their onus to prove compliance with the provisions of Section 21 of RA 9165, as amended, and its IRR, which is fundamental in preserving the integrity and evidentiary value of the *corpus delicti*. **To the mind of the Court, the procedure outlined in Section 21 is straightforward and easy to comply with.** In the presentation of evidence to prove compliance therewith, the prosecutors are enjoined to recognize any deviation from the prescribed procedure and provide the explanation therefor as dictated by available evidence. Compliance with Section 21 being integral to every conviction, the appellate court, this Court included, is at liberty to review the records of the case to satisfy itself that the required proof has been adduced by the prosecution whether the accused has raised, before the trial or appellate court, any issue of non-compliance. If deviations are observed and no justifiable reasons are provided, the conviction must be overturned, and the innocence of the accused affirmed.<sup>60</sup>

**WHEREFORE**, in view of the foregoing, the appeal is hereby **GRANTED**. The Decision dated August 30, 2013 of the Court of Appeals, Twentieth Division, Cebu City in CA-G.R. CEB CR-HC No. 01275 is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant Alex Escaran y Tariman is **ACQUITTED** of the crimes charged on the ground of reasonable doubt, and is **ORDERED IMMEDIATELY RELEASED** from detention unless he is being lawfully held for another cause. Let an entry of final judgment be issued immediately.

Let a copy of this Decision be sent to the Superintendent of the New Bilibid Prison, Muntinlupa City, for immediate implementation. The said Superintendent is **ORDERED** to **REPORT** to this Court within five (5) days from receipt of this Decision the action he has taken. A copy shall also be furnished to the Director General of the Philippine National Police for his information.

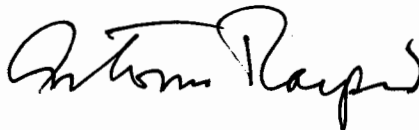
<sup>60</sup> *People v. Otico*, G.R. No. 231133, June 6, 2018, p. 23, citing *People v. Jugo*, G.R. No. 231792, January 29, 2018, p. 10.

**SO ORDERED.**



**ALFREDO BENJAMIN S. CAGUIOA**  
Associate Justice

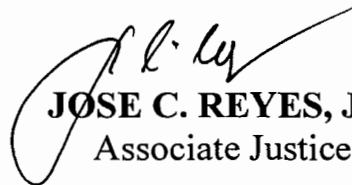
**WE CONCUR:**



**ANTONIO T. CARPIO**  
Associate Justice  
Chairperson



**ESTELA M. PERLAS-BERNABE**  
Associate Justice



**JOSE C. REYES, JR.**  
Associate Justice



**AMY C. LAZARO-JAVIER**  
Associate Justice

**ATTESTATION**

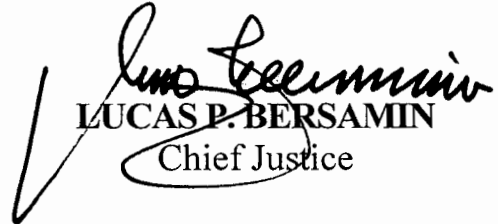
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



**ANTONIO T. CARPIO**  
Associate Justice  
Chairperson, Second 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.

  
LUCAS P. BERSAMIN  
Chief Justice

