



Republic of the Philippines
Supreme Court
 Manila

SECOND DIVISION

SUPREME COURT OF THE PHILIPPINES
 PUBLIC INFORMATION OFFICE

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PEOPLE OF THE PHILIPPINES,
 Plaintiff-Appellee,

G.R. No. 241631

Present:

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

- versus -

RODEL TOMAS y ORPILLA,
 Accused-Appellant.

Promulgated:

11 MAR 2019

x ----- *[Signature]* ----- x

DECISION

REYES, J. JR., J.:

This is an appeal filed by accused-appellant Rodel Tomas y Orpilla (Tomas) from the Decision¹ dated May 31, 2017 of the Court of Appeals (CA) in CA-G.R. CR HC No. 07245, affirming the Decision² dated December 3, 2014 of the Regional Trial Court (RTC) Branch 5, Tuguegarao City, Cagayan, in Criminal Case No. 14122, finding Tomas guilty beyond reasonable doubt of illegal sale of dangerous drugs, defined and penalized under Section 5, Article II of Republic Act (R.A.) No. 9165,³ otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

¹ Penned by Associate Justice Maria Elisa Sempio Diy, concurred in by Associate Justices Mariflor P. Punzalan Castillo and Florito S. Macalino; *CA rollo*, pp. 131-148.

² Penned by Judge Jezarene C. Aquino; *CA rollo*, pp. 51-60.

³ AN ACT INSTITUTING THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002, REPEALING REPUBLIC ACT NO. 6425, OTHERWISE KNOWN AS THE DANGEROUS DRUGS ACT OF 1972, AS AMENDED, PROVIDING FUNDS THEREFOR, AND FOR OTHER PURPOSES. APPROVED JUNE 7, 2002.

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In an Information dated May 9, 2011, Tomas was charged with violation of Section 5, Article II of R.A. No. 9165.⁴ The accusatory portion of the Information, reads:

That on May 8, 2011, in the City of Tuguegarao, Province of Cagayan, and within the jurisdiction of this Honorable Court, the accused RODEL TOMAS y ORPILLA alias "ERICK", without authority of law and without any permit to sell, transport, deliver and distribute dangerous drugs, did then and there, willfully, unlawfully, and feloniously, sell, and distribute two (2) heat-sealed transparent plastic sachets containing a total weight of 7.69 grams of METHAMPHETAMINE HYDROCHLORIDE, commonly known as "shabu," a dangerous drug, to IO1 BENJAMIN D. BINWAG, JR., who acted as a poseur buyer; that when the accused received the previously marked buy-bust money amounting to ₱62,000.00 consisting of two (2) pcs. genuine ₱1,000.00 peso-bill bearing serial Nos. AF343787 and CQ130665, and sixty (60) pcs. ₱1,000.00 peso-bill boodle money, which were placed in a white envelope from the said poseur buyer, accused in turn handed two (2) heat-sealed transparent plastic sachets containing the dangerous drugs wrapped in a printed paper to the said poseur buyer and this led to the apprehension and arrest of the accused and the recovery of the previously marked buy-bust money from his possession and control, and the confiscation of the dangerous drug at the Ground Floor of Brickstone Mall, Pengue-Ruyu, this city, by members of the Philippine Drug Enforcement Agency (PDEA), Regional Office No. 02, Camp Marcelo Adduru, Tuguegarao City, who formed the buy-bust team.

CONTRARY TO LAW.⁵

Trial ensued following Tomas' entry of a "not guilty" plea.

To establish its case, the prosecution presented Intelligence Officer 1 Benjamin D. Binwag, Jr. (IO1 Binwag), IO1 Juneclide D. Cabanilla (IO1 Cabanilla), Barangay Chairman Jimmy Pagulayan (Barangay Chairman Pagulayan), Police Senior Inspector Glenn Ly Tuazon (PSI Tuazon), and Investigating Agent 3 Allan Lloyd B. Leaño (IA3 Leaño). The defense, on the other hand, presented Tomas and Dr. Marcelina Mabatan-Ringor (Dr. Mabatan-Ringor).⁶

Version of the Prosecution

On May 8, 2011, at around 4:00 p.m., the Philippine Drug Enforcement Agency (PDEA) Regional Office No. 2 in Camp Adduru, Alimannao, Tuguegarao City received an information on the alleged illegal drug activity of a certain alias "Erick," later identified as Tomas. The confidential informant reported that Tomas was engaged in the illegal sale of

⁴ CA *rollo*, pp. 131-132.

⁵ Id. at 132.

⁶ Id. at 7-8.

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shabu and was looking for prospective buyers. Acting on the tip, Regional Director III Juvenal Azurin directed IA3 Leaño to organize a team that will undertake the buy-bust operation. IA3 Leaño formed the buy-bust team and designated IO1 Binwag as the poseur-buyer, IO1 Cabanilla as immediate back-up agent, and agents Giovanni Alan and Rosenia Cabalza as support operators.⁷

During the briefing, IA3 Leaño instructed the informant to call Tomas and arrange the purchase of two (2) "*bulto*" of *shabu*. When the phone call was made, Tomas agreed to the transaction and told the informant to prepare the payment and wait for his text message. IO1 Binwag prepared two pieces of genuine ₱1,000.00 with serial Nos. AF343787 and CQ130665, and sixty (60) pieces of fake ₱1,000.00 as the boodle money to be used in the entrapment operation.⁸

At around 5:00 p.m., Tomas called the informant and told him that they would meet at the Happy Mobile Phone and Gadget Store at the ground floor of Brickstone Mall in Pengue-Ruyu, Tuguegarao City. The buy-bust team immediately rushed to the meeting place and positioned themselves nearby to observe while IO1 Binwag and the informant approached Tomas. The informant introduced IO1 Binwag to Tomas. When Tomas asked for the payment, IO1 Binwag handed him the white envelope containing the marked money. In exchange, Tomas gave IO1 Binwag two (2) heat-sealed plastic sachets of white crystalline substance wrapped in printed paper. IO1 Binwag scratched his head as a pre-arranged signal to his companions, introduced himself as a PDEA agent, and ordered Tomas to remain still. The members of the apprehending team arrived and arrested Tomas who tried to escape. Tomas was handcuffed and frisked by IO1 Cabanilla. The white envelope containing the marked money and one (1) Nokia cellphone were recovered from Tomas' possession. IA3 Leaño informed Tomas of his constitutional rights and the law he violated. Thereafter, the entrapment team brought Tomas and the seized plastic sachets containing white crystalline substance to their office at Camp Adduru.⁹

At the PDEA Office, the Booking Sheet/Arrest Report was accomplished and signed by Tomas, IO1 Binwag, and IO1 Cabanilla.¹⁰ The marking, physical inventory, and photographs of the confiscated plastic sachets were also done at the PDEA Office in the presence of Tomas, Barangay Chairman Pagulayan, and media representative Cayetano B. Tuddao. IA3 Leaño executed a Request for Laboratory Examination on Seized Evidence. IO1 Binwag submitted the request and the seized plastic sachets to the crime laboratory for analysis and examination.¹¹ They were received by Senior Police Officer 2 Elyson Talattad who handed the request

⁷ Id. at 92

⁸ Id. at 93

⁹ Id.

¹⁰ Id. at 53

¹¹ Id. at 54

and specimen to PSI Tuazon. After the conduct of the laboratory examination, PSI Tuazon certified that the specimen marked as “Exhibit A-1 BDB 05-8-11” weighing 3.39 grams and “Exhibit A-2 BAB 05-8-11” weighing 4.30 grams tested positive for methamphetamine hydrochloride, a dangerous drug. IA3 Leaño also prepared and signed a Request for Physical Examination requesting the Tuguegarao City People’s General Hospital (TCPGH) to conduct a medical examination on Tomas. Based on the findings of Dr. Robin R. Zingapan, Medical Officer III, Tomas had no injury at the time he was examined.¹²

Version of the Defense

On May 8, 2011, at around 2:00 p.m., Tomas was in front of a pharmacy in Brickstone Mall to purchase medicine for his father when two (2) persons in civilian clothing suddenly held and pulled his hands to his back and placed him in handcuffs. One of the men pushed him inside a white Toyota Revo and brought him to the Regional Command where he was mauled and forced to admit ownership of the plastic sachets of *shabu* which came from the shirt pocket of IO1 Binwag. Tomas claimed that his personal belongings were taken from him, which include cash in the amount of ₱26,000.00 and \$25, and his sister’s ATM card.¹³

The PDEA agents brought him to TCGPH for a check up but the physician who attended to him only took his blood pressure. This prompted him to seek the opinion of another doctor, Dr. Marcelina Mabatan-Ringor who issued a medical certificate with the following findings: “[1] contusion hematoma, 9x5 [cm.] lateral chest (L); [2] abrasion, 3 cm. infrascapular area (L); and [3] abrasion, 0.5 cm. medial aspect distal 3rd posterior forearm (R).”¹⁴

In a Decision dated December 3, 2014, the RTC found Tomas guilty beyond reasonable doubt of violating Section 5, Article II of R.A. No. 9165. The *fallo* states:

WHEREFORE, the court renders judgment finding the accused, RODEL TOMAS y Orpilla, GUILTY beyond reasonable doubt of violating Sec. 5, 1st paragraph of Art. II, R.A. No. 9165 and sentences him, in accordance with law to suffer imprisonment of Life Imprisonment and to pay a fine in the amount of four hundred thousand (₱400,000.00) pesos.

The confiscated drugs are hereby forfeited in favor of the government. The Clerk of Court is hereby ordered to turn over the confiscated drugs to the Philippine Drug Enforcement Agency (PDEA)

¹² Id. at 54; p. 93

¹³ Id. at 34.

¹⁴ Id. at 35.

for their disposition in accordance with law together with a copy of this judgment.

SO ORDERED.¹⁵

The RTC found that all the elements for the illegal sale of dangerous drugs were fully established by the prosecution. It gave credence to the testimonies of IO1 Binwag and IO1 Cabanilla which have satisfactorily shown that there was a sale of illegal drugs that took place. It noted that Tomas never questioned the apprehending officers' compliance with the chain of custody rule.

Aggrieved, Tomas filed a Notice of Appeal on December 16, 2014 which was given due course by the RTC in its Order dated January 22, 2015.¹⁶

In its Decision dated May 31, 2017, the CA affirmed the findings of the RTC with modification in that the fine imposed on Tomas was increased to ₱500,000.00. It declared that the fact that the seized plastic sachets were marked at the Regional Office of PDEA does not deviate from the elements required in the preservation of the integrity of the seized drugs. It did not give weight to Tomas' defense of denial or frame-up which was never substantiated by clear and convincing evidence. It emphasized that Tomas never imputed evil motives on the part of the members of the apprehending team to falsely testify against him. Consequently, the presumption of regularity in the performance of duty must be upheld.

Hence, the present appeal.

In a Resolution¹⁷ dated October 17, 2018, the Court noted the records forwarded by the CA and notified the parties that they may file their supplemental briefs.

On December 18, 2018, through a Manifestation (Re: Supplemental Brief),¹⁸ the Office of the Solicitor General, on behalf of the People of the Philippines, stated that the office was not filing a supplemental brief as the Brief for the Appellee¹⁹ dated December 7, 2015, filed with the CA, had sufficiently addressed the issues and arguments in appellant's brief.

The OSG maintains that the alleged failure to strictly comply with the requirements of the chain of custody under R.A. No. 9165 and its IRR does not necessarily render the seized items inadmissible nor does it impair its evidentiary weight. It asserted that the prosecution was able to establish

¹⁵ Id. at 60.

¹⁶ Id. at 138.

¹⁷ *Rollo*, p. 25.

¹⁸ Id. at 34-37.

¹⁹ *CA rollo*, pp. 87-106.

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every link in the chain of custody through the categorical and consistent account given by its witnesses in the handling of the confiscated illegal substance.

In turn, Tomas filed his Manifestation (in lieu of Supplemental Brief)²⁰ on January 28, 2019 indicating that he is adopting his appellant's brief²¹ dated August 5, 2015, as his supplemental brief.

Tomas claims that his arrest was illegal and that the alleged seized items were inadmissible for being fruits of a poisonous tree. He specified the irregularities in the custody of the confiscated items, to wit: (1) the marking, photograph, and the inventory of the illegal drugs were not done immediately at the place of arrest; (2) no DOJ representative was present during the photograph and physical inventory; and (3) Barangay Chairman Pagulayan merely signed the Certificate of Inventory but did not witness the actual inventory of the seized items.

Our Ruling

The appeal is granted.

Three (3) elements must be shown to successfully prosecute a charge for illegal sale of dangerous drugs: first, the transaction or sale took place; second, the *corpus delicti* or the illicit drug was presented as evidence; and third, the buyer and the seller were identified.²²

Acting as the poseur-buyer, IO1 Binwag positively identified Tomas as the person he caught *in flagrante delicto* selling plastic sachets containing white crystalline substance suspected to be *shabu* in an anti-narcotics operation conducted by his team in the afternoon of May 8, 2011 in Brickstone Mall in Tuguegarao City. Tomas sold the *shabu* to him and received the marked money he handed as payment thereof. Evidently, the first and third elements were duly established by the prosecution in this case. But whether the second element was satisfied requires us to examine the apprehending officers' compliance with the rule on chain of custody encapsulated in Section 21 of R.A. No. 9165, *viz.*:

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

²⁰ Rollo, pp. 40-42.

²¹ CA rollo, pp. 28-49.

²² *People v. Bartolini*, 791 Phil. 626, 633-634 (2016).

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[.]

Later, Section 21(a) of the Implementing Rules and Regulations (IRR) of R.A. No. 9165 was issued prescribing the handling and disposition of seized dangerous drugs and a saving clause in case of non-conformity with the above rule:

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

Section 21 points out the conditions for the conduct of the physical inventory and taking of photograph of the seized items such that:

1. it must be done immediately after seizure or confiscation;
2. it must be done in the presence of the following personalities: a) the accused or his representative or counsel; b) representative from the media; c) representative from the DOJ; and d) any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof; and
3. it shall be conducted at the following places: a) place where the search warrant is served; or b) at the nearest police station or nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizure.

The members of the apprehending team miserably failed to meet the above specifications.

At the witness stand, both IO1 Binwag and IO1 Cabanilla admitted that they conducted the physical inventory and taking of photograph of the seized illegal drugs in their office at Camp Adduru, Tuguegarao City.²³ When asked for the reason for departing from the rule, they simply averred that it was “the discretion” of their team leader “to avoid being compromised in the area.” But the apprehending team did not elaborate how the conduct of the physical inventory and photographing at the place of seizure would unduly put its members or the buy-bust operation at risk. Neither did the team clarify the dangers that immediate inventory and photographing entail. In the same breath, IO1 Binwag and/or IO1 Cabanilla, without rhyme or reason, did not mark the seized plastic sachets of suspected *shabu* at the place of arrest even if they could have easily done so.

True, the conduct of the marking, physical inventory and photographing are not limited to the place of apprehension. In cases of warrantless seizure such as the one at bar, they may be performed at the nearest police station or nearest office of the apprehending officer. However, even if one were to consider the conduct of inventory and photographing at the PDEA Office acceptable, the apprehending team still veered away from the three-witness rule required by Section 21. The prosecution admitted that no DOJ representative was present during the physical inventory and photographing of the seized items. IO1 Cabanilla justified the absence of the DOJ representative stating that they tried to contact the DOJ but nobody arrived since the buy-bust operation fell on a Sunday, a non-working day. Equally worth noting is that Barangay Chairman Pagulayan did not actually witness the physical inventory of the seized items. The account of Barangay Chairman Pagulayan was straightforward and unequivocal:

ATTY. CALEDA:

Q So, it was from the PDEA agent from whom you came to know about the suspect?

WITNESS:

A Kindly repeat your question?

INTERPRETER:

(Interpreting the question to the witness.)

WITNESS:

A Yes, sir.

²³ CA rollo, pp. 38-39.

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ATTY. CALEDA: And because of the information given to you by the PDEA that is your sole basis in saying that he is the suspect in this case?

WITNESS: Yes, sir.

Q You also mentioned that you saw two sachets of shabu inside the PDEA office, am I correct?

A Yes, sir.

Q It was not a mere crystalline substance inside a plastic sachet, am I correct?

A Yes, sir.

Q You mean to say that upon arrival thereat, you already knew that those two plastic sachets were shabu?

A As I read the record on the report of the chemist, so that was already approved that that is a shabu.

Q You mean to say that at the time you saw the crystalline substance which you identified as shabu, there was already a laboratory report from the laboratory, is that correct?

A Yes, sir.

x x x x

Q Now, again, Mr. Witness, when you arrived at the PDEA, you already saw on top of the table this peso bills, Nokia cell phone and these two sachets containing crystalline substance which you identified as shabu, is that correct?

A Yes, sir, in front of the suspect, sir.

Q And you also admit that prior to the placing of these evidences on top of the table, you were not yet inside the premises of the PDEA office?

A I was not yet there, sir.²⁴

Time and again, the Court has stressed the significance of the presence of the three insulating witnesses during the physical inventory and photographing of the seized illegal drugs, that is, “to ensure the establishment of the chain of custody and remove any suspicion of switching, planting, or contamination of evidence.”²⁵ In *People v. Adobar*,²⁶ we have already put to rest the issue on when the presence of a representative from the media, the DOJ, and an elected public official must be obtained:

²⁴ Id. at 39-42.

²⁵ *People v. Corral y Batalla*, G.R. No. 233883, January 7, 2019.

²⁶ G.R. No. 222559, June 6, 2018.

In no uncertain words, Section 21 requires the apprehending team to “immediately after seizure and confiscation, physically inventory and photograph [the seized illegal drugs] in the presence of the accused x x x or his 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.”

The phrase “immediately after seizure and confiscation” means that the physical inventory and photographing of the drugs must be **at the place of apprehension and/or seizure**. If this is not practicable, it may be done as soon as the apprehending team reaches the nearest police station or nearest office.

In all of these cases, the photographing and inventory are required to be done **in the presence of any elected public official and a representative from the media and the DOJ who shall be required to sign an inventory and given copies thereof**. By the same intent of the law behind the mandate that the initial custody requirements be done “immediately after seizure and confiscation,” the aforesaid witnesses must already be physically present at the time of apprehension and seizure — a requirement that can easily be complied with by the buy-bust team considering that the buy-bust operation is, by its very nature, a planned activity. Simply put, the buy-bust team had enough time and opportunity to bring with them these witnesses.

In other words, while the physical inventory and photographing is allowed to be done “at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizure,” this does not dispense with the requirement of having the DOJ and media representative and the elected public official to be **physically present at the time of and at or near the place of apprehension and seizure so that they can be ready to witness the inventory and photographing of the seized drugs “immediately after seizure and confiscation.”**

The reason is simple, it is at the time of arrest or at the time of the drugs’ “seizure and confiscation” that the presence of the three (3) witnesses is most needed. **It is their presence at that point that would insulate against the police practices of planting evidence.** In *People v. Mendoza*, the Court ruled:

x x x Without the insulating presence of the representative from the media or the [DOJ], 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. x x x” (Citations omitted; emphases in the original).

The requirement of securing the presence of an elected public official, member of the DOJ, and member of the media is not a mere surplus that may be dispensed with by the apprehending team for it serves a vital purpose: to protect the accused against the possibility of planting, contamination, or loss of the seized drug.²⁷ Barangay Chairman Pagulayan’s arrival at the PDEA Office at the time when the seized illegal drugs have been subjected to quantitative and qualitative examination defeated the very purpose of the three-witness rule under Section 21. This is not to mention the fact that the prosecution failed to satisfactorily show that the apprehending team exerted honest-to-goodness efforts to secure the presence of the DOJ representative during the buy-bust operation or, at the very least, during the actual physical inventory and taking of photographs at the PDEA Office – an utter disregard of the Court’s pronouncement in *People v. Ramos*.²⁸

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

Less-stringent compliance with the requirements of Section 21 does not necessarily render void and invalid the seizure and custody over the seized items provided: 1) there is a justifiable ground for non-compliance; and 2) the integrity and evidentiary value of the seized items are properly

²⁷ *People v. Callejo y Tadeja*, G.R. No. 227427, June 6, 2018.

²⁸ G.R. No. 233744, February 28, 2018.

preserved.²⁹ As a saving mechanism and an exception to the strict compliance rule, the prosecution must be able to satisfy these twin requisites so as not to imperil the success of the prosecution's case.

Here, the members of the apprehending team failed to proffer a justifiable and credible explanations for the following lapses: 1) failure to conduct the marking, physical inventory, and taking of photographs immediately at the place of apprehension and confiscation; 2) failure to secure the presence of the elected public official, DOJ representative, and member of the media at the place of arrest and seizure; 3) failure to secure the presence of the elected public official and DOJ representative at the time of the actual inventory and photographing of the seized illegal drugs at the PDEA Office. The reasons cited by the apprehending officers *i.e.*, that the area will be compromised; that the entrapment operation fell on a non-working day were not factual but rather tenuous and flimsy at best. They were never substantiated nor corroborated by evidence. In *People v. De Guzman*,³⁰ it was settled 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.³¹ Clearly, the first requirement to trigger the saving clause is wanting.

The belated marking of the seized items at the PDEA Office without plausible explanation demonstrates outright that there exists a serious gap in the chain at its inception, the marking being the starting point in the link that each temporary custodian of the evidence will utilize as a reference point.³² The possibility of alteration, substitution or tampering of the seized items, by accident or in any other manner, is not at all remote since they did not bear markings or labels when they were transported from the place of arrest and seizure to the PDEA Office as to render them readily identifiable. The members of the entrapment team did not recognize this procedural breach and, more importantly, outline the measures taken to preserve the identity of the seized items. Moreover, mere identification of the handlers of the seized items from the time they were recovered from Tomas' possession up to the time they were presented in court as evidence is sorely insufficient. The apprehending officers should have shown the manner in which the illegal drug was transferred in every link of the chain as well as the care and protection each custodian exercised in order to erase confusion in the confiscation, handling, and examination of the seized items and eliminate doubts as to the authenticity of the illegal drugs presented in court. Instructive is the case of *Mallillin v. People*:³³

As a method of authenticating evidence, the chain of custody rule requires that the admission of an exhibit be preceded by evidence

²⁹ *People v. Año y Del Remedios*, G.R. No. 230070, March 14, 2018.

³⁰ 630 Phil. 637 (2010).

³¹ *Id.* at 649.

³² *People v. Sanchez y Calderon*, G.R. No. 221458, September 5, 2018.

³³ 576 Phil. 576 (2008).

sufficient to support a finding that the matter in question is what the proponent claims it to be. It would include testimony about every link in the chain, from the moment the item was picked up to the time it is offered into evidence, in such a way that every person who touched the exhibit would describe how and from whom it was received, where it was and what happened to it while in the witness' possession, the condition in which it was received and the condition in which it was delivered to the next link in the chain. These witnesses would then describe the precautions taken to ensure that there had been no change in the condition of the item and no opportunity for someone not in the chain to have possession of the same.³⁴


The second requisite of the saving clause is conspicuously absent.

In light of the above disquisitions, the identity of the object of the sale not having been adequately established, the Court resolves to acquit Tomas based on reasonable doubt.

WHEREFORE, premises considered, the Decision dated May 31, 2017 of the Court of Appeals in CA-G.R. CR HC No. 07245, dismissing the appeal and affirming the Decision dated December 3, 2014 of the Regional Trial Court, Branch 5, Tuguegarao City, convicting appellant **RODEL TOMAS y ORPILLA** 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 an entry of final judgment be issued immediately.

Let a copy of this Decision be furnished the Director of the Bureau of Corrections, for immediate implementation. 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.



JOSE C. REYES, JR.
Associate Justice

³⁴ Id. at 587.

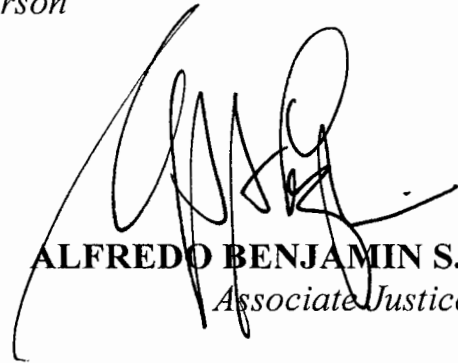
WE CONCUR:



ANTONIO T. CARPIO
Senior Associate Justice
Chairperson



ESTELA M. PERLAS-BERNABE
Associate Justice



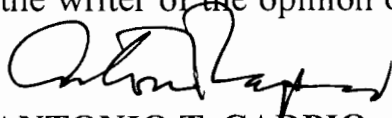
ALFREDO BENJAMIN S. CAGUIOA
Associate Justice



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.

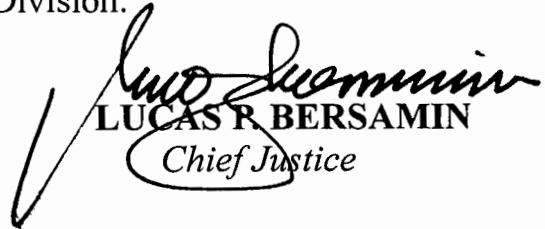


ANTONIO T. CARPIO
Senior Associate Justice
Chairperson, Second Division

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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 R. BERSAMIN
Chief Justice