



Republic of the Philippines  
Supreme Court  
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated **December 5, 2019** which reads as follows:

**“G.R. No. 243791 – (People of the Philippines v. Edfinland Pontero y Hechanova and Edilberto Pontero y Hechanova)**

On appeal is the September 27, 2018 Decision<sup>1</sup> of the Court of Appeals-Cebu City (CA-Cebu) in CA-G.R. CR-HC No. 02642 which affirmed the July 20, 2017 Decision<sup>2</sup> of the Regional Trial Court (RTC), 6<sup>th</sup> Judicial Region, Branch 52, Bacolod City in Criminal Case No. 12-36472/73<sup>3</sup> (for violation of Sections 11 and 12, Article II of Republic Act (R.A.) No. 9165 and Criminal Case No. 12-36474/75<sup>4</sup> (for violation of Sections 5 and 11, Article II of R.A. No. 9165) finding appellant Edilberto Pontero y Hechanova, (Edilberto) guilty beyond reasonable doubt of Illegal Possession of Dangerous Drugs and Paraphernalia and his brother, appellant Edfinland Pontero y Hechanova (Edfinland) guilty beyond reasonable doubt of Illegal Sale and Possession of Dangerous Drugs.

On June 27, 2012, four Information<sup>5</sup> was filed against appellants. Two Information was filed against Edfinland for Illegal Sale and Possession of Dangerous Drugs while the other two Information was filed against Edilberto for Illegal Possession of Dangerous Drugs and Drugs Paraphernalia.

The evidence for the prosecution based on the testimony of Police Officer 3 Ballo-All (PO3 Ballo-Allo) and the Forensic Chemist

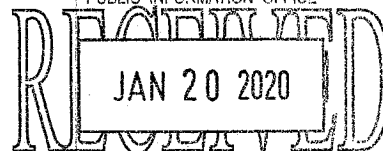
<sup>1</sup> Penned by Associate Justice Edward B. Contreras, with Associate Justices Louis P. Acosta and Dorothy P. Montejo-Gonzaga, concurring; *rollo*, pp. 4-14;

<sup>2</sup> *CA rollo*, pp. 59-76.

<sup>3</sup> *Id.* at 13-16.

<sup>4</sup> *Id.* at 17-20.

<sup>5</sup> *Id.* at 13-20.



BY: YCA  
TIME: 2:02

Officer Police Chief Inspector Paul Jerome S. Puentespina (PCI Puentespina) of Negros Occidental Provincial Crime Laboratory Office, Bacolod City, shows that on June 22, 2012, Police Superintendent (PS) Santiago Y. Rapiz informed the City Anti-Illegal Special Operations Task Group (CAID-SOTG) that he received information from a confidential agent that a certain Edfinland Pontero was engaged in selling *marijuana* in Purok Dalawidaw. A briefing was conducted for a buy-bust operation, with PO3 Ballo-Allo acting as *poseur*-buyer. He would be accompanied by the confidential agent to assist him in buying *marijuana*. PO3 Ballo-Allo was given a ₱100.00 bill as buy-bust money and marked "SYR."<sup>6</sup> Before conducting their operation, the buy-bust team coordinated with the Philippine Drug Enforcement Agency.<sup>7</sup>

At around 11:45 a.m. on June 22, 2012, PO3 Ballo-Allo and the confidential agent went to Edfinland's house. Upon arrival, the confidential agent pointed to PO3 Ballo-Allo a certain Edfinland who at that time was talking to a person inside his house, later identified as his brother and co-appellant Edilberto. PO3 Ballo-Allo and the confidential agent approached Edfinland. The agent introduced PO3 Ballo-Allo to Edfinland as his friend who wanted to buy *marijuana* worth ₱100.00. Edfinland then demanded for payment which PO3 Ballo-Allo handed over in exchange for the three rolled *marijuana* cigarettes. Upon checking the items, PO3 Ballo-Allo identified himself as a police officer. The rest of the CAID-SOTG team arrived after receiving a missed call from the confidential agent. PO3 Ballo-Allo then informed appellants of their violations and constitutional rights.

PO3 Ballo-Allo searched both appellants. He recovered from Edfinland the ₱100.00 buy-bust money and another two rolled *marijuana* cigarettes while a transparent plastic sachet of *shabu*, an improvised tooter and cash amounting to ₱17,380.00 in different denominations and believed to be proceeds from the sale of drugs were recovered from Edilberto. PO3 Ballo-Allo also recovered several empty sachets, two improvised bamboo clips, one disposable lighter, a pair of scissors, one green pouch and one plastic canister containing *shabu* on top of the table.

Appellants together with the seized items under the custody of PO3 Ballo-Allo were brought to the barangay hall for marking, inventory and photograph. PO3 Ballo-Allo marked the seized items

<sup>6</sup> Id. at 64.

<sup>7</sup> Id. at 70.

recovered from Edfinland as follows: the three rolled *marijuana* cigarettes which is the subject of sale were marked "EHP A-1" to "EHP A-3," and, the *other* two rolled *marijuana* cigarettes found in the latter's possession "EHP B-1" to "EHP B-2." As to the items recovered from Edilberto, PO3 Ballo-Allo marked the elongated transparent plastic sachet of suspected *shabu* "EHP-A," the improvised tooter, disposable lighter and one plastic canister containing suspected *shabu* "EHP."<sup>8</sup>

After the inventory, the CAID-SOTG buy-bust team brought appellants to the police station for recording and detention purposes. PO3 Ballo-Allo brought the items to the local crime laboratory on the same day at 7:10 p.m. The items were received by PO2 Portos, a representative of the crime laboratory.

Forensic Chemical Officer, PCI Puentespina, testified that specimen marked "EHP A-1," "EHP A-2" "EHP A-3" "EMP B-1" and "EMP B-2" tested positive for the presence of *marijuana*, while specimen marked "EHP A" and "EHP" tested positive for methamphetamine hydrochloride or *shabu*. PCI Puentespina was certain that what he brought to the court was the same specimen he examined because of his personal markings thereon.<sup>9</sup>

On the other hand, appellants denied the accusation against them. According to Edfinland, at around 10:00 a.m. on June 22, 2012, he was with other persons, not his brother Edilberto, preparing an improvised cockpit for a cockfight because it was their barangay fiesta. Then a male police officer in civilian clothes arrived, immediately arrested and handcuffed him. He was brought inside his house and once inside, he saw that there were other policemen searching his house, but nothing was found.

For his part, Edilberto avers that at around 10:00 a.m. on June 22, 2012, he was inside his house, sleeping, when he was awakened by the noise coming from his neighbor's house. He went outside his house and saw a police officer holding a gun. The police officer asked what was inside his pocket as it was bulging. When he answered that it was money, the police officer took the same and placed it inside his own pocket. Edilberto was then handcuffed and ordered to go inside his house, while the other policemen were searching the premises, but

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<sup>8</sup> Id. at 64-65.

<sup>9</sup> Id. at 65.

recovered nothing. When he was instructed to go out, he saw his brother Edfinland also handcuffed.<sup>10</sup>

Later on, they were brought to the barangay hall where they saw the items allegedly seized from them, already lying on the table. Thereafter they were transferred to the police headquarters.

On July 20, 2017, the RTC promulgated its Decision,<sup>11</sup> the dispositive portion of which, reads:

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

(a) In Criminal Case No. 12-36474 (Sale/Delivery of Dangerous Drugs), finding Accused-Defendant EDFINLAND PONTERO y HECHANOVA “**GUILTY**”, beyond reasonable doubt, of the [sic] violation of Section 5, Article II, Comprehensive Dangerous [Drugs] Act of 2002 as charged in the Information dated June 27, 2012. Consequently, he is hereby sentenced to suffer the penalty of life imprisonment and to pay a fine of Five Hundred Thousand Pesos (₱500,00.00);

(b) In Criminal Case No. 12-36475 (Possession of Dangerous Drugs), finding Accused-Defendant EDFINLAND PONTERO y HECHANOVA “**GUILTY**”, beyond reasonable doubt, of the [sic] violation of Section 11, Article II, Comprehensive Dangerous [Drugs] Act of 2002 as charged in the Information dated June 27, 2012. Consequently, he is hereby sentenced to suffer the indeterminate sentence of twelve (12) years and eight (8) months, as minimum to seventeen (17) years and eight (8) months, as maximum. He is also ordered to pay a fine of Three Hundred Thousand Pesos (₱300,000.00);

(c) In Criminal Case No. 12-36472 (Possession of Dangerous Drugs), finding Accused-Defendant EDILBERTO PONTERO y HECHANOVA “**GUILTY**”, beyond reasonable doubt, of the [sic] violation of Section 11, Article II, Comprehensive Dangerous [Drugs] Act of 2002 as charged in the Information dated June 27, 2012. Consequently, he is hereby sentenced to suffer the indeterminate sentence of twelve (12) years and eight (8) months, as minimum to seventeen (17) years and eight (8) months, as maximum. He is also ordered to pay a fine of Three Hundred Thousand Pesos (₱300,000.00);

(d) In Criminal Case No. 12-36472 (Possession of Dangerous Drug Paraphernalia), finding Accused-Defendant EDILBERTO PONTERO y HECHANOVA “**GUILTY**”, beyond

<sup>10</sup> Id. at 65-66.

<sup>11</sup> Id. at 74-76.

reasonable doubt, of the [sic] violation of Section 12, Article II, Comprehensive Dangerous [Drugs] Act of 2002 as charged in the Information dated June 27, 2012. Consequently, he is hereby sentenced to suffer the indeterminate sentence of six (6) months and one (1) day to four (4) years. He is also ordered to pay a fine of Ten Thousand Pesos (₱10,000.00);

(e) The dangerous drugs/paraphernalia subject matter of these cases are hereby **CONFISCATED** in favor of the government pursuant to Section 20, R.A. No. 9165 and ordered to be turned-over to the Philippine Drug Enforcement Agency, Negros Island Regional Office (PDEA-NIRO) for destruction;

(f) The Jail Warden of the Bureau of Jail Management and Penology, Metro Bacolod District Jail with SICA, Barangay Singcang-Airport, Bacolod City, is hereby **ORDERED** to **IMMEDIATELY TRANSFER** accused-defendants EDFINLAND PONTERO y HECHANOVA and EDILBERTO PONTERO y HECHANOVA to the Bureau of Corrections, National Bilibid Prison, Muntinlupa City, Metro Manila, for the service of their sentence pursuant to OCA Circular No. 40-2013; and

(g) No pronouncement as to cost.

**SO ORDERED.**

Aggrieved, appellants appealed their conviction to the CA-Cebu.

Appellants argue that there was a direct contravention of Section 21 of R.A. No. 9165 considering that the confiscated items were marked, inventoried and photographed only at the barangay hall and not immediately after its seizure at the place of the arrest. They contend that the markings of the confiscated items were confusing because the seized items were all marked with their initials "EHP A-1" to "EHP A-3" and "EHP B-1" to "EHP B-2," "EHP" and "EHP A," and it would be impossible to determine which of the items seized belong to whom as their initials were the same. They also claim that the chain of custody was not sufficiently established because PO2 Portos of the Negros Occidental Provincial Crime Laboratory Office who received the seized items was not presented as a witness.

In its Decision, the CA-Cebu ruled that the integrity and the evidentiary value of the evidence were maintained. The fact that the seized items were marked at the barangay hall was insignificant considering that the barangay was only 50 to 60 meters away and to the CA-Cebu the distance is as immediate as immediately could get.

Besides, according to PO3 Ballo-Allo, appellants' relatives were causing a commotion in the premises, so the team decided to have the markings on the seized items at the barangay hall. As to the method by which the evidence were marked, PO3 Ballo-Allo declared that the markings did not prevent him from properly identifying the evidence and attributing them to the corresponding appellant. That even during cross-examination, he correctly identified the evidence and their respective markings. Lastly, as to the non-presentation of PO2 Portos, the court ruled that his non-presentation as a witness was not a crucial point against the prosecution. It is the prosecution which has the discretion as to how to present its case and it has the right to choose whom it wishes to present as a witness.

Accordingly, the CA-Cebu disposed as follows:

WHEREFORE, the appeal is DENIED. The Decision of Branch 52 of the RTC of Bacolod City dated July 20, 2017, finding Accused-Appellant Edfinland Pontero guilty beyond reasonable doubt of violation of Section 5 and Section 11 of Republic Act No. 9165, and Accused-Appellant Edilberto Pontero guilty beyond reasonable doubt of violation of Section 11 and Section 12 of Republic Act No. 9165, is AFFIRMED.

SO ORDERED.<sup>12</sup>

Hence, this appeal seeking appellants' conviction to be overturned.

The appeal is meritorious.

In deciding a criminal case, the policy of the courts is always to look at the case in its entirety. The totality of the evidence presented by both the prosecution and the defense are weighed, thus, averting general conclusions from isolated pieces of evidence. This means that an appeal of a criminal case opens its entire records for review.<sup>13</sup>

In these cases, appellants were charged with Illegal Sale and Possession of Dangerous Drugs and Illegal Possession of Drug Paraphernalia. In a prosecution for the illegal sale of dangerous drugs under Section 5, Article II of R.A. No. 9165, the following elements must be established: (1) proof that the transaction or sale took place; (2) presentation in court of the *corpus delicti* or the illicit drug as evidence; and (3) identification of the buyer and seller. What is

<sup>12</sup> Rollo, p. 13.

<sup>13</sup> *People v. Larrañaga*, 502 Phil 231, 240 (2005).

material in a prosecution for illegal sale of drugs is the proof that the transaction or sale actually took place, coupled with the presentation in court of the *corpus delicti* in evidence.<sup>14</sup> On the other hand, in prosecuting a case for illegal possession of dangerous drugs, the following elements must concur: (1) the accused is in possession of an item or object, which is identified as a prohibited drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the drug.<sup>15</sup> For a conviction for illegal possession of drug paraphernalia to prosper, it is primordial to show that the accused was in possession or control of any equipment, paraphernalia, and the like, which was fit or intended for smoking, consuming, administering, among other acts, dangerous drugs into the body; and, such possession was not authorized by law.<sup>16</sup>

In these three instances, it is essential that the identity of the prohibited drug be established with moral certainty, considering that the dangerous drug itself forms an integral part of the *corpus delicti* of the crime. The prosecution has to show an unbroken chain of custody over the dangerous drugs so as to obviate any unnecessary doubts on their identity on account of switching, planting or contamination of the evidence. The necessity of maintaining an unbroken chain of custody and the mechanics of the custodial chain requirement were explained in *Mallillin v. People*,<sup>17</sup> thus:

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

While testimony about a perfect chain is not always the standard because it is almost always impossible to obtain, an unbroken chain of custody becomes indispensable and essential when the item of real evidence is not distinctive and is not readily

<sup>14</sup> *People v. Mendoza*, G.R. No. 225064, January 19, 2018 (Minute Resolution).

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

<sup>16</sup> *People v. Taboy*, G.R. No. 223515, June 25, 2018.

<sup>17</sup> 576 Phil 576, 587-588 (2008).

identifiable, or when its condition at the time of testing or trial is critical, or when a witness has failed to observe its uniqueness. The same standard likewise obtains in case the evidence is susceptible to alteration, tampering, contamination and even substitution and exchange. In other words, the exhibit's level of susceptibility to fungibility, alteration or tampering — without regard to whether the same is advertent or otherwise not — dictates the level of strictness in the application of the chain of custody rule.

In *People v. Kamad*,<sup>18</sup> the Court recognized the following links that must be established in the chain of custody: *first*, the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; *second*, the turnover of the illegal drug seized by the apprehending officer to the investigating officer; *third*, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and *fourth*, the turnover and submission of the marked illegal drug seized from the forensic chemist to the court.

Section 21(1) of R.A. No. 9165 outlines the procedure to be followed by the apprehending officers in the seizure, initial custody, and handling of confiscated illegal drugs and/or paraphernalia, to wit:

SEC. 21. x x x

(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 this provision is Section 21(a) of the IRR of R.A. No. 9165, which mandates that:

SEC. 21. x x x

(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

<sup>18</sup> 624 Phil. 289, 304 (2010).



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 23, 2014,<sup>19</sup> Section 21(1) of R.A. No. 9165 was amended by R.A. No. 10640 which modifies the number of witnesses during the conduct of the inventory, but, it adopted the saving clause under Section 21 of the IRR of R.A. No. 9165.

The offense subject of this appeal was committed on June 22, 2012, thus, the governing law is R.A. No. 9165. Section 21 of this Act requires that the apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same not only in the presence of the accused or his representative or counsel, but also of three additional witnesses, namely: a representative from the media and the DOJ, and any elected public official. However, non-compliance of the apprehending team to strictly comply with the procedure laid down under Section 21 of R.A. No. 9165 and its implementing rules 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.<sup>20</sup> However, prevailing jurisprudence, instructs 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. Moreover, 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>21</sup>

In this case, the Court finds that the arresting officer failed to comply with certain provisions of R.A. No. 9165 and its implementing rules without any justifiable reasons, thus, putting into question the integrity and evidentiary value of the dangerous drugs seized from the appellants.

<sup>19</sup> See OCA Circular No. 77-2015 dated April 23, 2015. |||

<sup>20</sup> *People v. Goco*, 797 Phil. 433, 443 (2016).

<sup>21</sup> *People v. De Guzman*, 630 Phil. 637, 649 (2010).

PO3 Ballo-Allo marked and prepared an inventory of the seized items at the barangay hall on the plain allegation that appellants' relatives were causing commotion in the said premises. No compelling explanation was given as to what caused the commotion by the prosecution. In *People v. Sood*,<sup>22</sup> the Court ruled that the buy-bust team could have planned the operation in such a way that any possible commotion could be avoided or contained. More, the buy-bust team's excuse of commotion was not a justifiable reason for failure to conduct an inventory at the place of arrest because the armed men could have easily contained it.

The records show that the seized items were marked, inventoried and photographed only in the presence of appellants and some of the elective barangay officials, Barangay Captain Nelson Ligaya, Barangay Kagawad Ernel Lanza and Barangay Kagawad Guillermo Oas. The presence of representatives from the media and the DOJ was not obtained despite the fact that a buy-bust operation is supposedly pre-planned. Also, a review of the Transcript of Stenographic Notes does not yield any testimony from PO3 Ballo-Allo as to the reason why there is no representative from the media or the DOJ or any attempt on the part of the arresting team to prove that there were genuine and earnest effort exerted to secure the presence of the required witnesses.

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

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 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. Sipin*,<sup>24</sup> thus:

<sup>22</sup> G.R. No. 227394, June 6, 2018, 865 SCRA 368.

<sup>23</sup> G.R. No. 219953, April 23, 2018, 862 SCRA 352, 367-368.

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 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.** (Emphasis in the original)

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. 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 the justifying any perceived deviation from the requirements of the law. Its failure to follow the mandated procedure must be adequately explained and must be proved as a fact in accordance with the rules on evidence. The rule requires 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. A stricter adherence to Section 21 is required where the quantity of illegal drugs seized is miniscule since it is highly susceptible to planting, tampering, or alteration.<sup>25</sup>

In *People v. Guieb*,<sup>26</sup> the court reiterated the consequence of the failure of the prosecution to provide justifiable grounds for non-compliance with Section 21 of R.A. No. 9165 and its IRR:

To make matters worse, the prosecution did not proffer a plausible explanation as to why there was a complete absence of an elected official and a representative from the DOJ and the media in order for the saving clause to apply. To reiterate, the law requires the presence of the enumerated witnesses — namely, an elected

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<sup>24</sup> G.R. No. 224290, June 11, 2018.

<sup>25</sup> *People v. Oliva*, G.R. No. 234156, January 7, 2019.

<sup>26</sup> G.R. No. 233100, February 14, 2018, 855 SCRA 620.

official, as well as a representative from the DOJ and the media — to ensure the establishment of the chain of custody and remove any suspicion of switching, planting, or contamination of evidence. Thus, considering the police officers' unjustified [non-compliance] with the prescribed procedure under Section 21, Article II of [R.A. No.] 9165, the integrity and evidentiary value of the seized drugs are seriously put into question.

Verily, the procedural lapse committed by the police officers, which was unfortunately unacknowledged and unexplained by the State, militates against a finding of guilt beyond reasonable doubt against the accused, as the integrity and evidentiary value of the *corpus delicti* had been compromised. It is well-settled that the procedure in Section 21, Article II of [R.A. No.] 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. As such, since the prosecution failed to provide justifiable grounds for [non-compliance] with Section 21, Article II of [R.A. No.] 9165, as well as its IRR, Guieb's acquittal is perforce in order.<sup>27</sup>

Indeed, the chain of custody here had been repeatedly breached. The Court is constrained to conclude that the integrity and the evidentiary value of the items seized have been compromised for failure of the prosecution to provide justifiable grounds which would excuse appellants' transgression. Thus, appellants must be acquitted of the charges against them.

**WHEREFORE**, the appeal is **GRANTED**. The Decision dated September 27, 2018 of the Court of Appeals in CA-G.R. CR-HC No. 02642 which affirmed the July 20, 2017 Decision of the Regional Trial Court of Bacolod City is **REVERSED** and **SET ASIDE**.

Appellants Edfinland Pontero y Hechanova and Edilberto Pontero y Hechanova are hereby **ACQUITTED** for failure of the prosecution to prove their guilt beyond reasonable doubt. They are **ORDERED IMMEDIATELY RELEASED** from detention, unless they are confined for any other lawful cause.

The Director of the Bureau of Corrections, Muntinlupa City is **ORDERED** to implement this Resolution and inform the Court of the date of the actual release from confinement of the appellants within five (5) working days from receipt hereof.

The motion of Atty. Alora Mae J. Tambasen-Sato of the Public Attorney's Office to withdraw appeal (for accused-appellant Edilberto

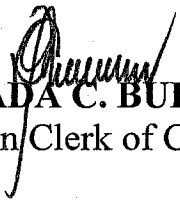

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<sup>27</sup> Id. at 637.

Pontero y Hechanova), is **NOTED**. Atty. Alora Mae J. Tambasen-Sato is hereby required to **SUBMIT** within five (5) days from notice hereof, a soft copy in compact disc, USB or e-mail containing the PDF file of the signed motion to withdraw appeal, pursuant to A.M. Nos. 10-3-7-SC and 11-9-4-SC.

**SO ORDERED.”**

Very truly yours,

  
**LIBRADA C. BUENA**  
Division Clerk of Court   
**140-A**

The Solicitor General  
134 Amorsolo Street, Legaspi Village  
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The Presiding Judge  
Regional Trial Court, Branch 52  
6100 Bacolod City  
(Criminal Case No. 12-36472/73;  
Criminal Case No. 12-36474/75)

Messrs. Edfinland Pontero y Hechanova  
and Edilberto Pontero y Hechanova (x)  
Accused-Appellants  
c/o The Director General  
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