



Republic of the Philippines  
**Supreme Court**  
Manila

**FIRST DIVISION**

**NOTICE**

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated August 31, 2022, which reads as follows:*

**“G.R. No. 232350 (*People of the Philippines v. Irish Reclozado y Avena and Meann Marcelo y Flores*). —** Challenged in this appeal<sup>1</sup> is the October 28, 2016 Decision<sup>2</sup> of the Court of Appeals (CA) in CA-G.R. CR-HC No. 07845 which affirmed the October 7, 2015 Joint Decision<sup>3</sup> of the Regional Trial Court (RTC) of Manila City, Branch 13, in Criminal Case Nos. 12-292015 and 12-292016 finding accused-appellants Irish Reclozado y Avena (Reclozado) and Meann Marcelo y Flores (Marcelo) guilty beyond reasonable doubt for violation of Section 5,<sup>4</sup> Article II of Republic Act No. (RA) 9165,<sup>5</sup> otherwise known as the “Comprehensive Dangerous Drugs Act of 2002,” as amended. In addition, the appellate court affirmed the RTC’s findings that accused-appellant Reclozado is guilty beyond reasonable doubt for violation of Section 11,<sup>6</sup> Article II of RA 9165.

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<sup>1</sup> *Rollo*, pp. 17-18.

<sup>2</sup> *Id.* at 2-16. Penned by Associate Justice Marlene Gonzales-Sison and concurred in by Associate Justices Ramon A. Cruz and Henri Jean Paul B. Inting (now a Member of this Court).

<sup>3</sup> CA rollo, pp. 64-72. Penned by Judge Emilio Rodolfo Y. Legaspi III.

<sup>4</sup> REPUBLIC ACT NO. 9165, ARTICLE II:

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

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<sup>5</sup> Entitled “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.

<sup>6</sup> REPUBLIC ACT NO. 9165, ARTICLE II:

Section 11. *Possession of Dangerous Drugs.* - The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (P500,000.00) to Ten million pesos (P10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall

**The Antecedent Facts**

Accused-appellants were both charged in Criminal Case No. 12-292015 with the Illegal Sale of *shabu*, a dangerous drug, in violation of Section 5, Article II of RA 9165. The accusatory portion of the Information reads:

## Criminal Case No. 12-292015

That on or about June 8, 2012, in the City of Manila, Philippines, the said accused, conspiring and confederating together and helping [each other], not having been authorized by law to sell, trade, deliver, or give away to another any dangerous [drugs], did then and there willfully, unlawfully, knowingly and jointly sell or offer for sale to a poseur-buyer one (1) heat-sealed transparent plastic sachet containing ZERO POINT ZERO ONE FIVE gram (0.015g) of white crystalline substance containing methamphetamine hydrochloride known as “SHABU”, a dangerous drug.

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

In Criminal Case No. 12-292016, accused-appellant Reclozado was likewise charged with the crime of Illegal Possession of *shabu*, a dangerous drug, in violation of Section 11 of the same Act, under the following Information:

## Criminal Case No. 12-292016

That on or about June 8, 2012, in the City of Manila, Philippines, the said accused, without having been authorized by law to possess any dangerous drug, did then and there willfully, unlawfully, and knowingly have in [her] possession and under [her] custody and control one (1) heat-sealed transparent plastic sachet containing ZERO POINT ZERO ONE NINE gram (0.019g) of white crystalline substance containing methamphetamine hydrochloride known as “SHABU”, a dangerous drug.

CONTRARY TO LAW.<sup>8</sup>

Accused-appellants entered pleas of “not guilty” to the respective offenses charged against them.<sup>9</sup>

During the pre-trial conference, the parties stipulated on the following: (a) the forensic chemical officer, Police Chief Inspector Elisa G. Reyes (PCI Reyes), was the one who received a request from Police Officer 2 Voltaire Yap (PO2 Yap) to conduct a laboratory examination on two heat-sealed

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possess any dangerous drug in the following quantities, regardless of the degree of purity thereof:

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<sup>7</sup> Records, pp. 2-3.

<sup>8</sup> Id. at 4-5.

<sup>9</sup> *Rollo*, p. 3.

transparent plastic sachets with markings PAL1 and PAL2; (b) After conducting a laboratory examination, PCI Reyes found the specimens positive for methamphetamine hydrochloride; (c) PCI Reyes reduced her findings in Chemistry Report No. D-449-12;<sup>10</sup> (d) PCI Reyes turned over the specimens, request for laboratory examination, and the subject chemistry report to the prosecution for safekeeping purposes; and (e) PCI Reyes had no personal knowledge with regard to the actual source of the specimens.<sup>11</sup>

Thereafter, trial on the merits ensued.

### Version of the Prosecution

On June 8, 2012, Senior Police Officer 3 Emmanuel Bautista, Jr. (SPO3 Bautista), a member of the District Anti-Illegal Drugs Special Operations Task Group (DAID-SOTG) of the Manila Police District, received information from an informant about the illegal drug activities of a certain *alias* Olan in the vicinity of Paltok and San Jose Streets, Manila City.<sup>12</sup>

On the basis of this information, a buy-bust operation was planned where SPO3 Bautista was designated as the poseur-buyer. It was also decided that once the sale is consummated, SPO3 Bautista will light a cigarette as the pre-arranged signal to his co-arresting police officers. The planned operation was coordinated with the Philippine Drug Enforcement Agency (PDEA).<sup>13</sup> Before the entrapment, SPO3 Bautista prepared two pieces of ₱100.00 bills which were to be utilized as the buy-bust money. He marked the bills with his initials, "E.B." In addition, he also prepared a Pre-Operation Report and Authority to Operate.<sup>14</sup>

Afterwards, at around 7:00 p.m., the buy-bust team proceeded to the target area. Upon the team's arrival at the area together with the informant, SPO3 Bautista saw Reclozado and Marcelo. When *alias* Olan, who turned out to be Reclozado, noticed the presence of the informant, he conversed with Marcelo. Then, Marcelo approached the informant and asked him if they were going to buy shabu. The informant introduced SPO3 Bautista as the one who will buy shabu.<sup>15</sup>

SPO3 Bautista then told Marcelo, "[*k*]uha ako dalawang piso for panggamit lang." Upon hearing this, Marcelo demanded for the money, which prompted SPO3 Bautista to give her the marked money. Marcelo then walked

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<sup>10</sup> Records, p. 18.

<sup>11</sup> *Rollo*, p. 4.

<sup>12</sup> *CA rollo*, p. 83.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.* at 84.

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

back towards Reclozado who was about six meters away from them.<sup>16</sup>

SPO3 Bautista saw Marcelo give the marked money to Reclozado who readily accepted the same and placed it in his pants' left front pocket. From the same pocket, Reclozado took out one transparent plastic sachet and gave it to Marcelo who then walked back towards SPO3 Bautista and the informant. Marcelo handed over to SPO3 Bautista the transparent plastic sachet containing shabu.<sup>17</sup>

After receipt of the plastic sachet, SPO3 Bautista made the pre-arranged signal to alert the back-up team that the sale had been consummated.<sup>18</sup> Shortly thereafter, the rest of the team rushed towards them. When Marcelo noticed the presence of the police officers, she tried to evade arrest. Thus, SPO3 Bautista immediately grabbed her hand and introduced himself as a police officer. Reclozado also tried to evade arrest, but he was arrested by Senior Police Officer 2 Rommel Rey and Senior Police Officer 3 Francisco Guevarra.<sup>19</sup>

The heat-sealed transparent plastic sachet that SPO3 Bautista bought during the buy-bust operation was marked as "PAL1."<sup>20</sup> After the arrests were made, SPO3 Bautista introduced himself and the others as police officers, ordered both accused-appellants to stay beside each other, and to empty their pockets. SPO3 Bautista then recovered the marked money from Reclozado and another heat-sealed transparent plastic sachet from his left front pocket, which SPO3 Bautista marked as "PAL2." Photographs were taken during the marking of said plastic sachets.<sup>21</sup>

The buy-bust team thereafter brought accused-appellants to their headquarters at DAID-SOTG in United Nations Avenue, Ermita, Manila. Once there, an inventory of the seized items and marked money was conducted in the presence of accused-appellants and media representative Rene Crisostomo (Crisostomo). Photographs were likewise taken during said inventory.<sup>22</sup>

After the inventory was finished, SPO3 Bautista endorsed the seized items to the investigator, PO2 Yap, and a Chain of Custody Form was executed. The latter, in turn, forwarded the items to the Manila Police District Crime Laboratory Office (MPDCLO) for examination.<sup>23</sup>

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<sup>16</sup> Id.

<sup>17</sup> Id.

<sup>18</sup> *CA rollo*, p. 85.

<sup>19</sup> Id. at 85.

<sup>20</sup> *Rollo*, p. 149.

<sup>21</sup> *CA rollo*, p. 85.

<sup>22</sup> Id. at 85.

<sup>23</sup> Id. at 85-86.

PCI Reyes conducted the examination on both heat-sealed transparent sachets which turned out to be positive for methamphetamine hydrochloride, locally known as shabu, a dangerous drug.<sup>24</sup>

### **Version of the Defense**

Marcelo testified that on June 8, 2012, at around 7:00 p.m., she was outside her house in Sampaloc, Manila when she was suddenly approached by five individuals in civilian attire who introduced themselves as police officers. They invited her for questioning. Marcelo was handcuffed and forcibly taken inside a vehicle where she saw Reclozado. They were then brought to the DAID office of the Manila Police District in United Nations Avenue, Manila where Marcelo was placed inside a cell. Later, she was brought outside for an inquest proceeding.<sup>25</sup>

Meanwhile, Reclozado testified that on June 8, 2012, at around 4:00 p.m., he was waiting for tricycle passengers at G. Tuazon Street, Sampaloc, Manila when four individuals in civilian clothes alighted from a Tamaraw FX vehicle and approached him. Reclozado was then frisked by these persons who introduced themselves as police officers. Reclozado was then made to board a vehicle which took him to the police headquarters in United Nations Avenue. Inside the police headquarters, Reclozado was forced to point to a small piece of plastic sachet while being photographed. Later, he was brought to the Manila City Hall for inquest proceedings.<sup>26</sup>

### **Ruling of the Regional Trial Court**

In its October 7, 2015 Joint Decision,<sup>27</sup> the RTC found accused-appellants guilty of the crime/s respectively charged against them. The dispositive portion of the Joint Decision reads:

In Criminal Case No. 12-292015

WHEREFORE, in view of the foregoing, this Court finds the accused IRISH RECLOZADO y AVENA & MEANN MARCELO y FLORES GUILTY beyond reasonable doubt as principals for violation of Section 5 of Republic Act No. 9165 otherwise known as the Comprehensive Dangerous Drugs Act of 2002 (for pushing shabu) as charged and each are sentenced to suffer the penalty of LIFE IMPRISONMENT and to pay a Fine in the amount of ₱500,000.00 each.

In Criminal Case No. 12-292016

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<sup>24</sup> Id. at 86.

<sup>25</sup> *Rollo*, p. 8.

<sup>26</sup> Id. at 8-9.

<sup>27</sup> *CA rollo*, pp. 64-72. Penned by Judge Emilio Rodolfo Y. Legaspi III.

WHEREFORE, in view of the foregoing, this Court finds the accused IRISH RECLOZADO y AVENA GUILTY beyond reasonable doubt as principal for violation of Section 11(3) of Republic Act No. 9165 otherwise known as the Comprehensive Dangerous Drugs Act of 2002 (for possession of shabu) as charged and he is sentenced to suffer imprisonment in an indeterminate penalty of twelve (12) years and one (1) day to fifteen (15) years and to pay a Fine in the amount of ₱350,000.00.

The plastic sachets are ordered confiscated in favor of the government to be disposed of in accordance with law.

Send copies of this Decision to the Director General of the Philippines Drug Enforcement Agency (PDEA) and to the Director of the National Bureau of Investigation (NBI).

SO ORDERED.<sup>28</sup>

### **Ruling of the Court of Appeals**

Aggrieved, accused-appellants filed an appeal with the CA. However, in its October 28, 2016 Decision, the appellate court affirmed the findings of the RTC. The *fallo* of its Decision reads:

**WHEREFORE**, premises considered, the instant Appeal is **DENIED** and the assailed 7 October 2015 Joint Decision of the Regional Trial Court of Manila, Branch 13 is **AFFIRMED**.<sup>29</sup>

### **Issue**

Undaunted, accused-appellants filed the instant appeal, which raises the lone issue of whether they are guilty beyond reasonable doubt of the crime/s charged against them.

### **Our Ruling**

After examining the testimonies of the witnesses and the evidence adduced by the parties, We reverse the conviction of accused-appellants for the crime/s they were respectively charged with.

We find that the prosecution failed to show an unbroken chain of custody of the seized illegal drugs. There was no testimony of the custodian of the seized specimen or any stipulation of his/her testimony, specifically on the safeguards that he or she undertook to preserve the identity and integrity of the confiscated drugs prior to their presentation to the trial court. There was likewise an unjustified failure on the part of the apprehending officers to

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<sup>28</sup> Id. at 71.

<sup>29</sup> *Rollo*, p. 15.

comply with the procedure prescribed under Section 21(1) of RA 9165 and Section 21(a) of its Implementing Rules and Regulations (IRR). In particular, there was noncompliance with the required presence of witnesses, specifically, an elected public official and a representative of the Department of Justice (DOJ) during the marking and physical inventory of the seized drugs.

**The prosecution failed to establish an unbroken chain of custody**

To secure a conviction for Illegal Sale of Dangerous Drugs under Section 5, Article II of RA 9165, the prosecution must establish the following elements: (1) the identity of the buyer and the seller, the object of the sale and its consideration; and (2) the delivery of the thing sold and the payment therefor.<sup>30</sup> “What is important is that the sale transaction of drugs actually took place and that the object of the transaction is properly presented as evidence in court and is shown to be the same drugs seized from the accused.”<sup>31</sup>

For Illegal Possession of Dangerous Drugs, the following elements must be established: (i) the accused was in possession of dangerous drugs; (ii) such possession was not authorized by law; and (iii) the accused was freely and consciously aware of being in possession of dangerous drugs.<sup>32</sup>

In cases of Illegal Sale and Illegal Possession of dangerous drugs, “the dangerous drug seized from the accused constitutes the *corpus delicti* of the offense. Thus, it is of utmost importance that the integrity and identity of the seized drugs must be shown to have been duly preserved. The chain of custody rule performs this function as it ensures that unnecessary doubts concerning the identity of the evidence are removed.”<sup>33</sup>

The term chain of custody pertains to the “duly recorded authorized movements and custody of seized drugs or controlled chemicals from the time of seizure, to receipt in the forensic laboratory to safekeeping, to presentation in court. An unbroken chain of custody is necessary in order to establish before the court that the prohibited drug confiscated or recovered from the suspect is the very same substance offered in court as exhibit.”<sup>34</sup> We have consistently held that in prosecuting both Illegal Sale and Illegal Possession of Dangerous Drugs, conviction **cannot** be sustained **if doubt persists** on the identity of said drugs.<sup>35</sup> In this connection, it is settled that the identity of the dangerous drug must be established with moral certainty. Apart from showing

<sup>30</sup> *People v. Ordiz*, G.R. No. 206767, September 11, 2019.

<sup>31</sup> *People v. Refe*, G.R. No. 233697, July 10, 2019.

<sup>32</sup> *De Villa v. People*, G.R. No. 224039, September 11, 2019.

<sup>33</sup> *People v. Refe*, *supra*.

<sup>34</sup> *Tañamor v. People*, G.R. No. 228132, March 11, 2020.

<sup>35</sup> *People v. Royol*, G.R. No. 224297, February 13, 2019. Emphasis supplied.

that the elements of possession or sale are present, the fact that the dangerous drug illegally possessed and sold is the same drug offered in court as exhibit must likewise be established with the same degree of certitude as that needed to sustain a guilty verdict.<sup>36</sup> Therefore, because it is crucial that the substance confiscated from the accused be the very same substance offered in court, “the Court has adopted the chain of custody rule, a method of authenticating evidence which 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.”<sup>37</sup>

The chain of custody consists of the following four links: 1) the seizure and marking, if practicable, of the illegal drug confiscated from the accused by the apprehending officer; 2) the turnover of the seized drug by the apprehending officer to the investigating officer; 3) the turnover by the investigating officer of said item to the forensic chemist for examination; and, 4) the turnover and submission thereof from forensic chemist to the court.<sup>38</sup>

After a careful examination of the records of the case, We find that the prosecution failed to establish an unbroken chain of custody of the seized drugs in violation of Section 21, Article II of RA 9165.

The fourth link, which refers to the turnover and submission of the seized item from the forensic chemist to the court, was not satisfactorily established in this case. Here, the parties’ stipulation was limited to the fact that PCI Reyes examined the seized specimens and thereafter returned the same to the evidence custodian for safekeeping.<sup>39</sup> However, the custodian’s testimony was never offered in the course of the trial. There was also no stipulation on how the evidence custodian preserved the integrity and evidentiary value of the seized item. Upon examination of the records, there was even no mention of the name of the evidence custodian or that he/she appended his/her signature to prove that he/she received the seized items, as well as the precautionary measures he/she undertook to preserve the identity and integrity of the same.

**The absence of the required witnesses results in the failure to preserve an unbroken chain of custody and adversely affected the integrity and credibility of the *corpus delicti*, thus creating reasonable doubt**

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<sup>36</sup> Id.

<sup>37</sup> *People v. Cabuhay*, 836 Phil. 903, 915 (2018).

<sup>38</sup> *People v. Angeles*, G.R. No. 229099, February 27, 2019.

<sup>39</sup> Records, p. 40.



The crimes here were committed prior to the effectivity of RA 10640,<sup>40</sup> which amended RA 9165. The pertinent provisions of Section 21, Article II of RA 9165, prior to its amendment, state:

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

(1) **The apprehending team** having initial custody and control of the 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; (*Emphasis supplied*).

Similarly, the IRR further elaborates on the proper procedure to be followed in Section 21 (a) of RA 9165. It states:

(a) The apprehending office/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;

Thus, prior to the amendment of RA 9165 by RA 10640, three witnesses are required to be present during the physical inventory and photography of the seized items, namely: a representative from the media **and** the Department of Justice (DOJ), **and** any elected public official.<sup>41</sup>

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<sup>40</sup> Entitled "AN ACT TO FURTHER STRENGTHEN THE ANTI-DRUG CAMPAIGN OF THE GOVERNMENT, AMENDING FOR THE PURPOSE SECTION 21 OF REPUBLIC ACT NO. 9165, OTHERWISE KNOWN AS THE "COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002." Approved on July 15, 2014.

<sup>41</sup> *People v. Gutierrez*, 842 Phil. 681, 689-690 (2018).

In the absence of the witnesses required by law during the physical inventory and photography of the seized items, the Court stressed in *People v. Lim*<sup>42</sup> that the prosecution must provide proof of earnest efforts to secure the attendance of these witnesses. As We explained in *People v. Ramos*:<sup>43</sup>

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. (Emphasis in the original; underscoring supplied)

In the case at bar, the records indicate that only a representative from the media was present during the physical inventory and photography of the seized items.<sup>44</sup> Upon examination of the records, the prosecution failed to show that earnest efforts were made to procure the attendance of the required witnesses and likewise failed to provide a justifiable reason for their absence. During the cross examination of SPO3 Bautista, he testified:

Q: Were efforts exerted so as to avail the services of these witnesses for them to be present?

A: Yes, ma'am. We asked for the presence of the barangay officials, ma'am.

Q: How did you ask for the presence of the barangay officials?

A: We asked the bystanders who were present at the area, ma'am.

Q: You asked bystanders to call the barangay officials, is that what you are trying to say?

A: Yes, ma'am.

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<sup>42</sup> 839 Phil. 598, 622 (2018).

<sup>43</sup> 826 Phil. 981, 996-997 (2018).

<sup>44</sup> CA rollo, p. 85.

Q: And you actually expected that these bystanders would help your operation?

A: Yes, ma'am.

Q: Was it not your duty as the officials to secure these barangay officials instead of you delegating it to the bystanders?

A: Yes, ma'am. But at the time there was [sic] no barangay officials, so we believed that it was more practical that we took the inventory at the office, ma'am.

Q: And into your mind in doing so, you exerted effort?

A: Yes, ma'am.

Q: Aside from this Mr. Rene Crisostomo, who else were present when you prepared the inventory?

A: The two suspects, my co-arresting officers and the investigator, ma'am.

Q: Did you secure the DOJ representative?

A: No, ma'am.

Q: No media representative?

A: The media representative was Mr. Rene Crisostomo, ma'am.

Q: How about a barangay official?

A: Rene Crisostomo is also a barangay official, ma'am.

Q: Is he a barangay official of the same district where the buy bust operation was allegedly conducted?

A: No, ma'am.

Q: He is a barangay official of a different location, correct?

A: Different district, ma'am.<sup>45</sup>

Certainly, the law enforcers' reliance on the efforts of the bystanders to secure the presence of the required witnesses does not qualify as genuine and earnest efforts expected of them in the apprehension of drug suspects. We have repeatedly held that mere statements of unavailability, but absent actual serious attempts to contact the required witnesses are unacceptable grounds for noncompliance.<sup>46</sup> Furthermore, the law requires three witnesses to be present during the inventory and photography. Here, only media representative Crisostomo witnessed the inventory and photography of the seized items. Moreover, the fact that Crisostomo is likewise a *barangay* official is immaterial. He cannot serve as an elected public official and a media representative at the same time. What the law requires are three different witnesses and not personalities who serve dual or multiple roles or capacities. In any event, PO3 Bautista only testified that Crisostomo was a

<sup>45</sup> TSN, February 27, 2015, pp. 15-17.

<sup>46</sup> *People v. Gamboa*, 833 Phil. 1055, 1071 (2018).

*barangay* official but failed to show whether Crisostomo was an *elected* public official as the law requires.<sup>47</sup>

The purpose of the law in requiring the presence of certain witnesses at the time of the seizure and inventory of the seized items, is to “insulate the seizure from any taint of illegitimacy or irregularity,”<sup>48</sup> and to protect against the possibility of planting, contamination or loss of the confiscated drug.<sup>49</sup> In *People v. Gabriel, Jr.*,<sup>50</sup> We reiterated that “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.” Consequently, the insulating presence of such witnesses would preserve an unbroken chain of custody.

In the case at bar, the police operatives’ failure to secure the presence of any elected public official and a DOJ representative, without any justifiable reason, and without exerting earnest efforts to do so, effectively rendered nugatory the salutary purpose of the law, which is designed to provide an insulating presence during the inventory and photography of the seized items, in order to obviate switching, ‘planting’ or contamination of the evidence.<sup>51</sup> Needless to say, this adversely affected the integrity and credibility of the seizure and confiscation of the sachets of *shabu* subject of this case.

We point out that the presence of the elected public official, media and DOJ representatives were necessary to insulate the apprehension and incrimination proceedings from any taint of illegitimacy or irregularity, and the failure to secure their attendance adversely affected the integrity and credibility of the seized specimens.<sup>52</sup> The insulating presence of such witnesses would have preserved an unbroken chain of custody,<sup>53</sup> and thus an omission of their attendance casts suspicion on the *corpus delicti* of the offense charged, thereby creating reasonable doubt.<sup>54</sup> We have consistently underscored that a buy-bust operation is susceptible to abuse, and the only way to prevent this is to ensure that the procedural safeguards provided by the law are strictly observed.<sup>55</sup> In the present case, not only have the prescribed

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<sup>47</sup> *People v. Miranda*, G.R. No. 218126, July 10, 2019.

<sup>48</sup> *People v. Dayon*, G.R. No. 229669, November 27, 2019.

<sup>49</sup> *People v. Gabriel, Jr.*, G.R. No. 228002, June 10, 2019.

<sup>50</sup> *Id.*

<sup>51</sup> *People v. Dayon*, *supra*.

<sup>52</sup> *Id.*

<sup>53</sup> *People v. Madria*, 839 Phil. 179, 193 (2018).

<sup>54</sup> *People v. Dayon*, *supra*.

<sup>55</sup> *People v. Madria*, *supra*.

procedures not been followed, but also the lapses not justifiably explained. As We have reiterated in *People v. Alvarado*,<sup>56</sup> to wit:

This inexcusable non-compliance effectively invalidates their seizure of and custody over the seized drugs, thus, compromising the identity and integrity of the same. We resolve the doubt in the integrity and identity of the *corpus delicti* in favor of appellant as every fact necessary to constitute the crime must be established by proof beyond reasonable doubt. Considering that the prosecution failed to present the required quantum of evidence, appellants acquittal is in order.<sup>57</sup>

Considering the lapses on the part of the apprehending team, any doubt on the conduct of the police officers cannot be resolved in the prosecution's favor by relying on the presumption of regularity in the performance of official functions. The unjustified failure to observe the proper procedure prescribed under Section 21 of RA 9165 and its IRR negates the operation of the presumption of regularity accorded to police officers.<sup>58</sup>

All told, this Court finds the acquittal of accused-appellants in order due to the unexplained procedural lapses committed by the apprehending officers, and the prosecution's failure to adduce evidence establishing the chain of custody over the seized items that would unequivocally demonstrate that the illegal drugs presented in court were the same illegal drugs actually recovered from accused-appellants during the buy-bust operation. The totality of these circumstances leads Us to inevitably conclude that the prosecution fell short in proving beyond reasonable doubt that accused-appellants were indeed guilty of the crime/s they were respectively charged.

**WHEREFORE**, the appeal is **GRANTED**. The October 28, 2016 Decision of the Court of Appeals in CA-G.R. CR-HC No. 07845 is **REVERSED** and **SET ASIDE**. Accused-appellants Irish Reclozado y Avena and Meann Marcelo y Flores are **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 another lawful cause.

Let a copy of this Resolution be furnished the Director General of the Bureau of Corrections, Muntinlupa City and the Superintendent of the Correctional Institution for Women, Mandaluyong City, for immediate implementation. Both are **DIRECTED** to report to this Court the action taken hereon within five days from receipt of this Resolution.

Let entry of judgment be issued immediately.

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<sup>56</sup> 830 Phil. 785 (2018).

<sup>57</sup> Id. at 803.

<sup>58</sup> *People v. Jodan*, G.R. No. 234773, June 3, 2019.

**SO ORDERED.”**

**By authority of the Court:**

  
**LIBRADA C. BUENA**  
Division Clerk of Court *akals*

by:

**MARIA TERESA B. SIBULO**  
Deputy Division Clerk of Court

**98-I**  
SEP 19 2022

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Manila  
(CA-G.R. CR-HC No. 07845)

The Hon. Presiding Judge  
Regional Trial Court, Branch 13  
1000 Manila  
(Crim. Case Nos. 12-292015 & 12-292016)

The Superintendent (x)  
Correctional Institution for Women  
1550 Mandaluyong City

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No. 12-7-1-SC)

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UR