Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated **March 2, 2022** *which reads as follows:*

"G.R. No. 252899(*People of the Philippines, plaintiff-appellee v. Arnulfo O. Remigio, accused-appellant*). – This is an appeal from the September 13, 2019 Decision[1] and January 15, 2020 Resolution[2] of the Court of Appeals (*CA*) in CA-G.R. CR-HC No. 11449. The CA affirmed the May 8, 2017 Consolidated Decision[3] and July 28, 2017 Order[4] of the Regional Trial Court of Quezon City, Branch 82 (*RTC*), finding Arnulfo O. Remigio (*accused-appellant*) guilty beyond reasonable doubt of violation of Section 5, Article II of Republic Act (*R.A.*) No. 9165, otherwise known as the *Comprehensive Dangerous Drugs Act of 2002*, in Criminal Case No. GL-Q-13-180572.

Antecedents

Accused-appellant was charged with violation of Sec. 15, Art. II and Sec. 5, Art. II, of R.A. No. 9165 in Criminal Case Nos. GL-Q-13-180571 and GL-Q-13-180572, respectively. The accusatory portions of the informations read:

Criminal Case No. GL-Q-13-180571

> That on or about the 26th day of January 2013, in Quezon City, Philippines, the said accused, without any authority of law, did then and there willfully, unlawfully and feloniously use dangerous drugs containing Methamphetamine Hydrochloride based on a confirmatory test, in violation of said law.

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[1] *Rollo*, pp. 3-13; penned by Associate Justice Danton Q. Bueser with Associate Justices Fernanda Lampas Peralta and Ronaldo Roberto B. Martin, concurring.
[2] Id. at 79-80.
[3] *CA Rollo*, pp. 71-85; penned by Presiding Judge Lyn Ebora-Cacha.
[4] Id. at 86.

CONTRARY TO LAW.[5]

Criminal Case No. GL-Q-13-180572

That on or about the 26th day of January 2013, in Quezon City, Philippines, the said accused, not being authorized by law, to sell, dispense, deliver, transport or distribute or act as broker, did then and there, willfully and unlawfully sell, dispense, deliver, transport or distribute or act as broker in the said transaction, zero point three five six (0.3569) gram of Methamphetamine Hydrochloride, a dangerous drug.

CONTRARY TO LAW.[6]

Upon arraignment, accused-appellant pleaded not guilty to both charges. After pre-trial was terminated, trial on the merits ensued.[7]

The CA synthesized the evidence for the prosecution and the defense as follows:

The prosecution presented Intelligence Officer 1 Lawrence Anthony Daligcon ("IO1 Daligcon, for brevity"); and Intelligence Officer 2 Arcadio Saplan, Jr. ("IO2 Saplan, Jr., for brevity") as witnesses.

IO1 Daligcon testified that on January 26, 2013, at around 8:00 o'clock in the morning, he was at the Philippine Drug Enforcement Agency (PDEA) Regional Office when a confidential informant reported that a certain alias "Kid" was engaged in the selling of illegal drugs, particularly shabu, in the vicinity of UP Diliman, Quezon City.

Upon receipt of the information, Team Leader Cesar Dealagdon ("Agent Dealagdon, for brevity"), instructed the formation of a buy-bust team.

On the same date, at around 8:30 o'clock in the morning, IO1 Daligcon contacted the confidential informant and instructed the latter to set up a deal, for the purchase of shabu in the amount of [₱3,000.00], with alias Kid. Some time [sic] later, the confidential informant informed IO1 Daligcon that he had set up a meeting with alias Kid, later that day, at 2:00 o'clock in the afternoon, within the vicinity of UP Diliman Campus.

Right thereafter, the buy-bust team conducted a briefing for the conduct of their operation. The respective participants were discussed and IO1 Daligcon was designated as poseur-buyer while [IO2 Saplan, Jr.] was to act as back-up. The marked money of [₱500.00] was prepared and handed over to IO1 Daligcon.

[5] *Rollo*, pp. 3-4.
[6] Id. at 4.
[7] Id.

At 2:00 o'clock in the afternoon the buy-bust team proceeded to the target area. Upon arrival at UP Diliman Campus, IO1 Daligcon and the confidential informant alighted from the vehicle and the latter sent a text to alias Kid to notify Kid of their arrival. After 40 minutes, alias Kid, who turned out to be the [accused-]appellant, arrived. He approached the duo and introduced himself as alias Kid. The confidential informant then introduced IO1 Daligcon as the buyer of shabu. [Accused-]appellant then motioned to IO1 Daligcon to show him the money and IO1 Daligcon replied that he wanted to see the item first. [Accused-]appellant then handed one (1) heat-sealed plastic sachet containing white crystalline substance to IO1 Daligcon and the latter handed the [accused-]appellant the [₱500.00] marked money which was placed on top a [sic] boodle money to make it appear that it was [₱3,000.00.] After consummation of the transaction, IO1 Daligcon executed the pre-arranged signal and [IO2 Saplan, Jr.] quickly rushed forward and arrested the [accused-]appellant. After informing the [accused-]appellant of his Constitutional rights, he was taken to the PDEA Office. However, the PDEA agents were not able to conduct the inventory of the seized item at the place of arrest because people started gathering around them. Hence, the seized item was inventoried and photographed, in the presence of the [accused-]appellant, a Barangay Kagawad, and a Media Representative, at the PDEA office. They tried to get hold of a representative from the DOJ but failed to do so.

[Accused-]appellant claimed that he is a public school teacher and resides in Caloocan City. He testified that the buy-bust that the PDEA agents said transpired on January 26, 2013 did not happen. IO1 Daligcon and [IO2 Saplan, Jr.] were not at the place of arrest. It was agent Dealagdon who arrested him. [Accused-]appellant then proceeded to narrate his claim of events. He and agent Dealagdon were already having conversations, via phone calls and text messages, even prior to January 26, 2013. During their conversation, agent Dealagdon asked him to purchase [₱18,000.00] worth shabu for the latter. However, when they met at UP Technohub, agent Dealagdon only gave him [₱500.00] because agent Dealagdon wanted to try the item first before buying it in bulk. After getting hold of the [₱500.00] bill, [accused-]appellant went to Culiat to buy shabu from one Hadji Abraham. He thereafter met with agent Dealagdon and gave the latter the shabu. Agent [Dealagdon] then handcuffed him and introduced himself as an agent from PDEA.

[Accused-]appellant tested positive for the use of dangerous drugs and admitted that there were occasions that he used dangerous drugs, a habit which started when he was a student. He does not know why IO1 Daligcon claim [sic] he acted as [poseur-buyer] or why IO2 Saplan Jr. said he arrested [accused-]

> appellant when it was agent Dealagdon who arrested him. He only saw the two agents, for the first time, at the PDEA Office. He had never purchased shabu for other people and when asked how agent Dealagdon came to know him and found his number, he replied he does not know and he alleged that he would not have bought shabu had he not been offered a big amount of money.[8]

With regard to the testimony of Majorie Inojales (*Inojales*), the PDEA Forensic Chemist, the RTC stated that the prosecution proposed and the defense admitted the following: (1) that Inojales is a forensic chemist of the PDEA; (2) that her office received a request for laboratory examination together with a plastic sachet containing white crystalline substance; (3) that she conducted the requested laboratory examination and submitted a chemistry report, (4) that she found the specimen positive for methamphetamine hydrochloride; and (5) that, thereafter, she turned over the specimen to the evidence custodian and later retrieved the same and brought it to court.[9]

The RTC Ruling

In its May 8, 2017 Consolidated Decision, the RTC found accused-appellant guilty beyond reasonable doubt of violation of Sec. 5, Art. II of R.A. No. 9165 but acquitted him of the charge of violation of Sec. 15, Art. II of the same law. The dispositive portion reads:

> **WHEREFORE,** premises considered, judgment is hereby rendered as follows:
>
> 1. In Criminal Case No. GL-Q-13-180571, the Court finds the accused **Arnulfo O. Remigio ["NOT GUILTY"]** of violation of Section 15, Article II of R.A. [No.] 9165 on the ground of reasonable doubt.
>
> 2. In Criminal Case No. GL-Q-13-180572, the Court finds accused **Arnulfo O. Remigio "GUILTY"** beyond reasonable doubt of violation of Section 5, Article II of R.A. [No.] 9165.
>
> Accordingly, this Court sentences the accused **Arnulfo O. Remigio** to suffer the penalty of Life Imprisonment and to pay a Fine in the amount of Five [Hundred Thousand Pesos] ([₱500,000.00]); and

[8] Id. at 4-6.
[9] CA *rollo*, p. 77.

> The Branch Clerk of Court is hereby directed to transmit to the Philippine Drug Enforcement Agency (PDEA) the dangerous drugs subject of Criminal Case No. GL-Q-13-180572 for proper disposition and final disposal.
>
> **SO ORDERED.**[10]

The RTC held that the prosecution was able to establish all the elements of the crime of illegal sale of dangerous drugs under Sec. 5, Art. II of R.A. No. 9165. It observed that IO1 Daligcon, the poseur-buyer, categorically testified that he was able to buy ₱3,000.00 worth of *shabu* from accused-appellant using a ₱500.00 bill and boodle money. He also identified accused-appellant as the seller of the *shabu.* The buy-bust money (consisting of one (1) ₱500.00 bill) and the sachet of *shabu* were likewise established and identified by prosecution witness IO1 Daligcon. He also identified the *corpus delicti* through his initials "LAD 26 January 2013," which he affixed at the PDEA office. IO1 Daligcon testified to the fact of sale. IO2 Saplan, Jr. corroborated his testimony.[11]

The RTC declared that the prosecution was able to establish the integrity of the *corpus delicti* and the chain of custody of the seized drug on the basis of the testimony of IO1 Daligcon. He testified that he had custody of the drug seized from the moment accused-appellant was arrested, in transit from the place of seizure to the PDEA office, at the PDEA office, and until the time the drug was submitted to the PDEA laboratory. The fact that the seized evidence was not marked at the place of arrest did not affect the evidentiary weight of the drug.[12] The RTC, however, acquitted accused-appellant of the charge of violation of Sec. 15, Art. II of R.A. No. 9165 on reasonable doubt.

Dissatisfied, accused-appellant filed an appeal before the CA.

The CA Ruling

In its September 13, 2019 Decision, the CA denied the appeal. The *fallo* of the CA decision reads:

> **WHEREFORE,** the appeal is hereby **DENIED.**
>
> **SO ORDERED.**[13]

[10] Id. at 85.
[11] Id. at 79-80.
[12] Id. at 80-84.
[13] *Rollo*, p. 13.

The CA found that the chain of custody of the seized drug remained unbroken. While IO1 Daligcon admitted that he was not the one who marked the seized item and could not remember who did so, he explained that he never lost sight of the seized item because he was present when these actions were performed. The CA also held that while the inventory and photography were not conducted at the place of arrest, the same was justified because the buy-bust operation took place at the UP Diliman campus and onlookers had started to gather. Further, accused-appellant resisted arrest which resulted in a scuffle between him and IO2 Saplan, Jr. It was therefore justifiable for them to conduct the inventory at the PDEA office.[14]

With regard to the absence of a Department of Justice *(DOJ)* representative, the CA ruled that there was justifiable ground for the failure to comply with this requirement. It observed that the PDEA agents tried to contact a representative from the DOJ to attend the taking of inventory, but no one arrived. This is not fatal to the case because the integrity of the seized drug was preserved and the same was immediately marked for proper identification.[15] The CA further rejected accused-appellant's contention that the prosecution's failure to present the informant in court diminishes the case against him. It declared that the presentation of an informant during trial is not indispensable for the successful prosecution of the case against the drug-dealing accused.[16]

ISSUES

In his Supplemental Brief[17] dated January 4, 2021, accused-appellant ascribes the following errors allegedly committed by the CA:

I

THE LOWER COURT ERRED IN HOLDING THAT THERE IS NO CIRCUMSTANCE THAT WOULD HINT AT ANY DOUBT AS TO THE IDENTITY, INTEGRITY, AND EVIDENTIARY VALUE OF THE EVIDENCE PRESENTED IN COURT UNDER THE CHAIN OF CUSTODY RULE[; AND]

[14] Id. at 8-9.
[15] Id. at 10-11.
[16] Id. at 9-10.
[17] Id. at 36-66.

II

THE LOWER COURT ERRED IN RENDERING THE ACCUSED GUILTY BEYOND REASONABLE DOUBT FOR ILLEGAL SALE OF *SHABU* NOTWITHSTANDING THE FACT THAT THE PROSECUTION ONLY PRESENTED HEARSAY EVIDENCE IN PROVING THE ALLEGED AGREEMENT OF SALE BETWEEN THE ACCUSED AND THE CONFIDENTIAL INFORMANT.[18]

First, accused-appellant asserts that the absence of the DOJ representative during the inventory was not justified. The efforts made by the officers were not sufficient and do not justify the absence of the DOJ representative. The agents attempted to secure the presence of the DOJ representative only in the afternoon despite having received the confidential tip at around 8:00 a.m. Considering that they planned a buy-bust operation immediately thereafter, they exerted no genuine and sufficient effort to secure the presence of the DOJ representative.[19]

Second, accused-appellant asseverates that the prosecution failed to prove that the chain of custody of the seized drug was preserved. He highlights that IO1 Daligcon marked the seized drug only at the PDEA office. Further, he points out that the CA recognized the fact that IO1 Daligcon placed the unmarked seized drug in his pocket and that he admitted not being the one who marked the seized item. IO1 Daligcon could not remember who did the marking but only explained that he never lost sight of it. Accused-appellant also asserts that there is no evidentiary certainty that IO1 Daligcon's pocket did not contain a similar sachet owned by someone else. Thus, there is reasonable doubt as to the identity and integrity of the seized item. He also posits that it is absurd to believe IO1 Daligcon's statement that he never lost sight of the seized item.[20]

Finally, accused-appellant argues that the presentation of the confidential informant in court is indispensable to show his guilt. It is fatal since there is reasonable doubt as to the validity of the buy-bust operation due to the prosecution's reliance on hearsay evidence.[21]

[18] Id. at 41.
[19] Id. at 42-52.
[20] Id. at 55-59.
[21] Id. at 59-65.

The Court's Ruling

The petition is meritorious.

Accused-appellant should be acquitted because the *corpus delicti* in the instant case was not established.

In *People v. Bautista*,[22] the Court held:

> "In drug-related prosecutions, the **State bears the burden not only of proving the elements of the offenses of sale and possession of shabu under Republic Act No. 9165, but also of proving the *corpus delicti*, the body of the crime**. '*Corpus delicti* has been defined as the body or substance of the crime and, in its primary sense, refers to the fact that a crime has been actually committed. As applied to a particular offense, it means the actual commission by someone of the particular crime charged. The *corpus delicti* is a compound fact made up of two (2) things, *viz.*: the existence of a certain act or result forming the basis of the criminal charge, and the existence of a criminal agency as the cause of this act or result.' **The dangerous drug is itself the very *corpus delicti* of the violation of the law prohibiting the possession of the dangerous drug.**"[23] **Consequently, the State does not comply with the indispensable requirement of proving *corpus delicti* x x x when substantial gaps occur in the chain of custody of the seized drugs as to raise doubts on the authenticity of the evidence presented in court.**[24] (emphases supplied)

R.A. No. 9165 provides the procedure for the custody and disposition of confiscated, seized, and/or surrendered drugs, thus:

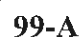
> SECTION 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/ Paraphernalia and/or Laboratory Equipment.* — The PDEA shall take charge and have custody of all dangerous drugs, 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:

[22] 682 Phil. 487 (2012).
[23] Id.
[24] Id. at 499-500.

> (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**. (emphases and underscoring supplied)

Meanwhile, its implementing rules and regulations 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 Equipm*ent. — 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:
>
> (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 **noncompliance 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**[.] (emphases and underscoring supplied)



Plainly, Sec. 21 requires that three (3) witnesses - a representative from the media, a representative from the DOJ, and any elected public official – be present during the physical inventory and photography of the seized items. Aside from being present during the physical inventory and photography of the seized items, they must also receive a copy of the inventory.

In the instant case, it is an established fact that only two out of the three mandatory witnesses (an elected public official in the form of a *barangay kagawad* and a media representative) were present during the physical inventory and photography of the seized drug. The required DOJ representative was absent.

Based on the foregoing, there was failure to strictly comply with the requisites of Sec. 21. Admittedly, such failure may be excused provided that there are: (1) justifiable reasons; and (2) proof that the integrity and evidentiary value of the evidence were maintained.[25] These requirements are cumulative, not alternative. Thus, in order to excuse the failure to comply with the requirements of Sec. 21, there must be both justifiable reasons for such failure and proof that the integrity and evidentiary value of the evidence were maintained. It is not enough that only the second requisite is met. The prosecution must allege and prove the presence of a justifiable ground to prove that the integrity and evidentiary value of the evidence were preserved.

The Court held in *People v. Lim*[26] that:

> It must be **alleged and proved** that the presence of the three witnesses to the physical inventory and photograph of the illegal drug seized was not obtained due to reason/s such as:
>
> (1) their attendance was impossible because the place of arrest was a remote area; (2) their safety during the inventory and photograph of the seized drugs was threatened by an immediate retaliatory action of the accused or any person/s acting for and in his/her behalf; (3) the elected official themselves were involved in the punishable acts sought to be apprehended; (4) **earnest efforts to secure the presence of a DOJ or media representative and an elected public official within the period required under Article 125 of the Revised Penal Code prove futile through no fault of the arresting officers, who face the threat of being charged**

[25] *People v. Asaytuno, Jr.*, G.R. No. 245972, December 2, 2019, 926 SCRA 613, 640.
[26] G.R. No. 231989, September 4, 2018, 879 SCRA 31.

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.**

Earnest effort to secure the attendance of the necessary witnesses must be proven. *People v. Ramos* requires:

> 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 noncompliance. 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.[27] (emphases supplied, citations omitted)

Herein, the Court finds untenable the excuse proffered by the prosecution to justify the absence of the DOJ representative. The PDEA agents did not exert earnest efforts to secure the presence of the DOJ representative.

[27] Id. at 61-63.

During his cross-examination on September 24, 2013, IO1 Daligcon testified that his team leader tried to contact the DOJ representative only in the afternoon. It must be observed, however, that the PDEA agents made arrangements with the confidential informant for the buy-bust operation as early as 8:00 a.m.

> Q: Republic Act 9165, Officer Daligcon requires you to prepare the inventory in the presence of the representative from the Department of Justice. That is a very critical witness, in this case why was there none?
>
> A: **The team leader for that operation tried to contact the representative from the Department of Justice, but he was not able to contact one, sir.**
>
> Q: **You mean your team leader failed to contact anybody from the Department of Justice?**
>
> A: **He was trying to contact the Department of Justice representative.**
>
> Q: **But what time was that, it was in the morning?**
>
> A: **It was in the afternoon, sir.**
>
> Q: **If it was in the afternoon, the City Prosecutor Office of Quezon City here is very near**. It's only in this building. In other words, you are admitting that there (sic) none?
>
> A: No DOJ representative was present during the inventory, sir.[28] (underscoring omitted, additional emphases supplied)
>
> x x x x
>
> PROS. MINGOA:
> Mr. Witness, do you recall your whereabouts on or about January 26, 2013 at around 8:00 in the morning?
>
> A: Yes, sir.
>
> x x x x
>
> PROS MINGOA:
> While you were at your office, do you recall having witnessed extra-ordinary event, if any?
>
> A: During that time, there was an [sic] confidential informant who reported to our team leader.
>
> COURT[:]
> Male or female?
>
> A: Male, Your Honor[.]
>
> PROS. MINGOA:
> What did this confidential informant report to your team leader, if you know?

[28] *Rollo*, p. 48.

A: According to the confidential Informant there was a certain alias [Kid] who was engaged in the selling or illegal drug particularly shabu, sir[.]

COURT:

Reported what?

A: The confidential informant reported to our Team Leader that there was certain alias Kid who was engaged allegedly involved in the sale of shabu.

COURT[:]

That he was selling shabu?

A: Yes, Your Honor.

COURT[:]

Where?

A: In the vicinity of UP Diliman, Quezon City, Your Honor.

PROS. MINGOA:

How did you come to know about this information, Mr. Witness, if you say the informant reported to your Team Leader?

A: The informant reported to our Team Leader and after reporting to him, the Team Leader called my attention and informed me that I have to talk to the confidential informant in order to be able to set up a deal.

Q: **What happened next after you were instructed to coordinate with the confidential informant?**

A: **I told the confidential informant to setup a deal with me with alias Kid regarding the purchase of [₱3,000.00] worth of Methamphetamine Hydrochloride.**

Q: **What time was that when you talked to the confidential informant?**

A: **On or about 8:30, Your Honor.**

Q: What was the response of the informant when you told him that you want to set up a deal with alias Kid?

A: He answered affirmatively and he was going to arrange a deal a [₱3,000.00] worth of Methamphetamine Hydrochloride, Your Honor.

Q: **What happened to the promise of your confidential informant to set up a deal with alias Kid?**

A: **According to the confidential informant, he was able to secure a deal for the purchase of [₱3,000.00] worth of Methamphetamine Hydrochloride, to be held at 2:00 p.m. on the same day.**

> Q: When you learned about this Mr. Witness, what did you do?
>
> A: I reported to the team leader and the team leader conducted a briefing to the team, sir. [29] (italics and underscoring omitted, additional emphases supplied)

In *People v. Labadan,*[30] the Court was confronted with a similar scenario. Therein, the specimen and other items seized from the accused were marked and inventoried only in the presence of a *barangay kagawad.* The Court held as follows:

> **It was not proven that the police officers truly endeavored to procure the necessary witnesses pursuant to Sec. 21 of R.A. No. 9165.** x x x **The only explanation offered by the prosecution — that there was none available — is simply unacceptable given the circumstances.** It should also be emphasized that **only PO3 Diomampo testified as to the efforts made by the team leader to procure witnesses. This hardly constitutes as proof of "earnest efforts" required by jurisprudence.**[31] (emphases supplied)

The efforts displayed by the PDEA agents in the instant case, by reason of parity, hardly constitute the earnest efforts required by jurisprudence. As IO1 Daligcon testified, his team leader tried to contact the DOJ representative only in the afternoon despite the buy-bust operation being planned early in the morning. They clearly had sufficient time between the planning and the execution to procure the presence of all the mandatory witnesses.

Once more, "[m]ere statements of unavailability, absent actual serious attempts to contact the required witnesses, are unacceptable as ground for noncompliance. Police officers are ordinarily given sufficient time — from the moment they receive the information about the activities of the accused until the time of his arrest — to prepare for a buy-bust operation. They have to convince the Court that they exerted earnest efforts to comply with the mandated procedure and that, under the circumstances, their actions were reasonable."[32]

[29] Id. at 48-50.
[30] G.R. No. 237769, March 11, 2019, 895 SCRA 600.
[31] Id. at 629-630.
[32] Id. at 630.

In the instant case, the prosecution failed to convince the Court that earnest efforts were exerted to comply with the mandated procedure. Hence, there was noncompliance with the requirements of Sec. 21, Art. II of R.A. No. 9165. Such noncompliance is fatal. It must be remembered that:

> The significance of complying with Section 21's requirements cannot be overemphasized. **[Noncompliance] is tantamount to failure in establishing identity of *corpus delicti*,** an essential element of the offenses of illegal sale and illegal possession of dangerous drugs. **By failing to establish an element of these offenses, [noncompliance] will, thus, engender the acquittal of an accused.**[33] (emphases supplied)

The failure to comply with the requirements of Sec. 21, Art. II of R.A. No. 9165 cannot be excused in the absence of a justifiable ground. The identity of the *corpus delicti* was not established. The acquittal of accused-appellant is proper.

Aside from the failure to comply with the requirements of Sec. 21, the Court also harbors serious concerns over the integrity and evidentiary value of the seized item. There appears to be a material gap in the chain of custody of the seized item.

The integrity and evidentiary value of seized items are properly preserved for as long as the chain of custody of the same is duly established. The links to be established in the chain of custody are as follows: *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.[34]

As to the first link of the chain, the Court has held that "[a]side from marking, the seized items should be placed in an envelope or an evidence bag unless the type and quantity of these items require a different type of handling and/or container. The evidence bag or

[33] *People v. Dela Cruz*, 744 Phil. 816, 827 (2014).
[34] *People v. Salvador*, 726 Phil. 389, 405 (2014).

container shall accordingly be signed by the handling officer and turned over to the next officer in the chain of custody. The purpose of placing the seized item in an envelope or an evidence bag is to ensure that the item is secured from tampering, especially when the seized item is susceptible to alteration or damage."[35]

In *Ramos v. People*,[36] the Court declared that the seized items were not properly secured upon confiscation. In said case, the police officer only placed the pieces of seized items in his pocket. Considering that the seized drugs involved were of small quantity (1.78 grams, 1.17 grams, 1.06 grams, 1.29 grams, 1.00 gram, 1.54 grams and 1.01 grams), the Court held that "the arresting officers should have secured these items by placing them in a singular evidence bag or plastic container to avoid tampering, planting or alteration."[37] It emphasized that "a more exacting standard is required of law enforcers when only a minuscule amount of dangerous drugs are alleged to have been seized from the accused."[38]

In the instant case, IO1 Daligcon testified that he placed the heat-sealed plastic sachet inside his pocket after seizure thereof from accused-appellant:

> Q What did alias Kid do when you asked him to show you the product?
>
> A After that, he handed over to me one heat sealed plastic sachet containing one heat sealed transparent plastic sachet containing white crystalline substance.
>
> Q After showing to you what did you do next, if any?
>
> A **He handed over to me and I put it in my pocket** and I gave him the buy bust money, Your honor.[39] (emphasis supplied)

Clearly, there was failure on the part of the PDEA agents to properly secure the seized item upon confiscation. It must be observed that the quantity involved here, 0.3569 gram of *shabu,* is minuscule, which thus makes it susceptible to alteration or damage. The PDEA agents should have secured the seized drug by placing it in an evidence bag or plastic container to prevent tampering, planting, or alteration. Their failure to properly secure the seized drug is fatal.

[35] *Ramos v. People*, 826 Phil. 663, 684 (2018).
[36] Id.
[37] Id. at 684-685.
[38] Id. at 685.
[39] *Rollo*, p. 57.

The Court cannot conclude that the identity, integrity, and evidentiary value of the seized item was preserved. There is reasonable doubt as to the *corpus delicti.* Accused-appellant must be acquitted on the basis of reasonable doubt.

WHEREFORE, premises considered, the Court **GRANTS** the appeal; **REVERSES** and **SETS ASIDE** the September 13, 2019 Decision and January 15, 2020 Resolution of the Court of Appeals in CA-G.R. CR-HC No. 11449; **ACQUITS** accused-appellant Arnulfo O. Remigio; and **ORDERS** his **IMMEDIATE RELEASE FROM DETENTION**, unless he is being lawfully held for another cause.

Let a copy of this Resolution be furnished the Director General of the Bureau of Corrections, Muntinlupa City. The said Director General is **ORDERED** to **REPORT** to this Court within five (5) days from receipt of this Resolution the action he has taken hereon.

Let entry of judgment be issued immediately.

SO ORDERED."

By authority of the Court:

LIBRADA C. BUENA
Division Clerk of Court

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court
99-A

The Solicitor General
134 Amorsolo Street, Legaspi Village
1229 Makati City

The Director General (x)
Bureau of Corrections
1770 Muntinlupa City

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Supreme Court

Court of Appeals (x)
Manila
(CA-G.R. CR-HC No. 11449)

The Hon. Presiding Judge
Regional Trial Court, Branch 82
1100 Quezon City
(Crim. Case No. GL-Q-13-180572)

JK HEFFRON & ASSOCIATES
Counsel for Accused-Appellant
Unit 202, The Manila Residences Tower II
2310 Taft Avenue, 1004 Manila

Mr. Arnulfo O. Remigio (x)
Accused-Appellant
c/o The Director General
Bureau of Corrections
1770 Muntinlupa City

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