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Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

G.R. No. 239887

Present:

- versus -

CARPIO, J., Chairperson,
CAGUIOA,
HERNANDO,*
LAZARO-JAVIER, and
ZALAMEDA, JJ.

JEFFREY FAYO y RUBIO A.K.A.
"JEFF",
Accused-Appellant.

Promulgated:

02 OCT 2019

X-----X

DECISION

CAGUIOA, J.:

Before the Court is an ordinary appeal¹ filed by the accused-appellant Jeffrey Fayoy Rubio a.k.a. "Jeff" (Fayo), assailing the Decision² dated January 25, 2018 (assailed Decision) of the Court of Appeals³ (CA) in CA-G.R. CR-HC No. 09060, which affirmed the Judgment⁴ dated January 23, 2017 rendered by the Regional Trial Court of Pasig City, Branch 164 (RTC) in Criminal Case Nos. 20349-D and 20350-D, entitled *People of the Philippines v. Jeffrey Fayo y Rubio @ "Jeff,"* finding Fayo guilty beyond reasonable doubt of violating Sections 5 and 11, Article II of Republic Act No. (RA) 9165,⁵ otherwise known as "The Comprehensive Dangerous Drugs Act of 2002," as amended.

* Designated additional member per Special Order No. 2587-N dated October 29, 2018.

¹ See Notice of Appeal dated February 19, 2018, *rollo*, pp. 17-18.

² Id. at 2-16. Penned by Associate Justice Pedro B. Corales with Associate Justices Jose C. Reyes, Jr. (now a member of this Court) and Eihuh A. Ybafiez, concurring.

³ Fourth Division.

⁴ CA *rollo*, pp. 38-46. Penned by Presiding Judge Jennifer Albano Pilar.

⁵ 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" (2002).

The Facts and Antecedent Proceedings

As narrated by the CA in the assailed Decision and as culled from the records of the instant case, the essential facts and antecedent proceedings of the instant case are as follows:

In Crim. Case No. 20349-D, Fayo was charged with illegal sale of *shabu* under the following Information:

On or about May 27, 2015, in Pasig City and within the jurisdiction of this Honorable Court, the accused, not being authorized by law, did then and there willfully, unlawfully and feloniously sell, deliver and give away to PO1 Jonathan Bueno y Pintuan, a member of Philippine National Police, who acted as a poseur-buyer, one (1) heat-sealed transparent plastic sachet containing 0.41 gram of white crystalline substance, which was found positive to the test of Methamphetamine Hydrochloride, a dangerous drug, in violation of the said law.

Contrary to law.

He was charged with illegal possession of *shabu* in Crim. Case No. 20350-D under an Information which reads:

On or about May 27, 2015, in Pasig City and within the jurisdiction of this Honorable Court, the accused, not being lawfully authorized to possess any dangerous drug, did then and there willfully, unlawfully and feloniously have in his possession and under his custody and control one (1) heat-sealed transparent plastic sachet containing 0.47 gram, one (1) heat-sealed transparent plastic sachet containing 0.61 gram, one (1) heat-sealed transparent plastic sachet containing 0.52 gram and one (1) heat-sealed transparent plastic sachet containing 6.43 grams, all in the total amount of 8.03 grams of white crystalline substance, which were found positive to the test of Methamphetamine Hydrochloride, dangerous drug, in violation of the said law.

Contrary to law.

When arraigned, Fayo pleaded not guilty to the offenses charged.

In the ensuing trial, the prosecution presented PO1 Jonathan P. Bueno (PO1 Bueno), the poseur buyer, and PO1 Randy S. Sanoy (PO1 Sanoy), the backup officer. The testimony of forensic chemist Police Senior Inspector Anghelisa S. Vicente (PSI Vicente) was dispensed with after the prosecution and the defense stipulated, among others, that: 1) she is a Forensic Chemist assigned at "EPD Crime Laboratory" Office, Mandaluyong City; 2) she is an expert witness in the field of forensic chemistry; 3) she received from Station Anti-Illegal Drugs Special Operation Task Group of Pasig City Police Station, Pasig City the Request for Laboratory Examination together with the specimen mentioned therein; 4) she conducted physical, chemical, and confirmatory test on the specimen;



5) the result of the laboratory examination was reduced in writing and contained in the Physical Sciences Report No. D-330-15E; 6) the authenticity and due execution of the letter-request and Physical Sciences Report No. D-330-15E; 7) in compliance with the order of the RTC, she brought with her the white copy of the Physical Sciences Report No. D-330-15E, the receiving copy of the letter-request and the specimen she subjected for laboratory examination; 8) she can identify the Request for Laboratory Examination, Physical Sciences Report No. D-330-15E, the specimen she subjected for laboratory examination, and her markings on the bigger plastic sachet and on the specimen; 9) she has no personal knowledge of the source and origin of the evidence she received, and the facts and the circumstances surrounding the arrest of the accused; and 10) she received the already pre-marked specimen. The parties likewise dispensed with the testimony of PO3 Nelson G. Cruz after stipulating that he is the investigator who prepared the Chain of Custody Form and Request for Drug Test and Laboratory Examination, and he has no knowledge of the origin of the specimen or the circumstances of the arrest.

Only Fayó testified for the defense.

The Version of the Prosecution

The testimonies of the prosecution's witnesses were summarized by the Office of the Solicitor General (OSG), representing the People of the Philippines, in this wise:

On May 27, 2015, at around 4:00 o'clock (*sic*) in the afternoon, Police Chief Inspector (PCI) Renato B. Castillo, Chief of the Station Anti-Illegal Drugs Special Operation Task Group (SAIDSOTG), Pasig City Police Station, conducted a meeting and informed the operatives that a confidential informant can accompany any one of them to buy illegal drugs from [Fayo] who is a known pusher at Barangay Manggahan, Pasig City. A buy-bust operation was planned against [Fayo] where PO1 Jonathan P. Bueno (PO1 Bueno) was tasked as the poseur-buyer, who will buy illegal drugs from [Fayo] using a one thousand-peso bill with Serial No. FA131613 bearing the markings "JPB" on its lower left corner. The agreed pre-arranged signal will be the act of PO1 Bueno in scratching his head which will signify that the buy-bust transaction is already consummated. The other operatives were tasked as perimeter back-ups, while PO1 Randy S. Sanoy (PO1 Sanoy) was designated as the immediate back-up of the poseur-buyer.

Armed with the coordination sheet and the pre-operation report, the team reached Floodway, Barangay Manggahan, Pasig City, at around 6:00 o'clock (*sic*) in the evening of the same day. They waited for the confidential informant for a few minutes and when he finally arrived, he informed the team that he and [Fayo] agreed to meet at Phoenix Gas Station, Amang Rodriguez Avenue, Barangay Manggahan. The team together with the confidential informant immediately went to the aforesaid gas station. PO1 Bueno and the confidential informant waited for

[Fayo] while the other members strategically positioned themselves. At around 6:30 o'clock (*sic*) in the evening, [Fayo] arrived and the confidential informant greeted him and introduced PO1 Bueno as the person who wanted to purchase illegal drugs.

[Fayo] then asked the confidential informant and PO1 Bueno how much they were buying, to which PO1 Bueno responded One Thousand Pesos (Php1,000.00) worth and immediately handed to [Fayo] the marked money. [Fayo] took the marked bill and kept it in his left pocket. He then took several sachets from his right pocket, choosing one and handing it to PO1 Bueno.

PO1 Bueno received the sachet from [Fayo] and executed the pre-arranged signal to alert his fellow operatives. PO1 Bueno then introduced himself as a police officer. While being apprehended [Fayo] tried to reach for something from his waistline, but was stopped by PO1 Sanoy. Upon frisking [Fayo], PO1 Sanoy discovered that [Fayo] was reaching for a calibre .45 gun, also, [Fayo] had a grenade in his backpack.

PO1 Bueno confiscated from [Fayo] an additional four (4) transparent plastic sachets all containing the same white crystalline substance believed to be *shabu*, as well as the marked One Thousand Peso (Php 1,000.00) bill.

At the place of arrest, PO1 Bueno, in front of [Fayo], marked the subject of the buy-bust operation as 2JPB/FAYO/5-27-2015 to 5JPB/FAYO/5-27-2015, affixing his signature in all of the specimens.

The buy-bust operatives requested for the presence of Punong Barangay Bobby L. Bobis (Bobis), but the latter advised them to just proceed to the Barangay Hall of Manggahan. So, the team proceeded to the Barangay [H]all where Bobis was already awaiting their arrival. Upon arrival, [Fayo] was presented to Bobis, in whose presence an inventory of the seized evidence was made, as well as the taking of photographs of the confiscated items.

After the marking, inventory and photographing, [Fayo] was brought to the office of the SAIDSOTG. PO1 Bueno presented [Fayo] to Investigator PO3 Cruz. PO3 Cruz prepared the Chain of Custody Form, Request for Laboratory Examination and Request for Drug Test, which documents together were marked five (5) sachets of suspected *shabu* were submitted by PO1 Bueno to the EPD Crime Laboratory in Mandaluyong City, specifically to Forensic Chemist PSI Vicente. The following day, PO1 Bueno secured a copy of the Physical Sciences Report No. D-330-15E where the specimens submitted tested positive for methamphetamine hydrochloride, a dangerous drug.



The Version of the Defense

Fayo denied the charges against him. At around 5 o'clock in the afternoon of May 27, 2015, he was allegedly on his way to collect the respective rent and earnings of his employer's house and store. While driving a motorcycle along Floodway, Taytay, Rizal, he had a traffic altercation with the driver and passenger of another motorcycle, later on identified as Marvin Santos (Santos) and PO1 Sanoy. Santos and PO1 Sanoy appeared drunk and hurled profane words against him. As Fayo was about to turn to Rodriguez Road, he heard a gunshot from behind and noticed Santos and PO1 Sanoy tailgating him. When he looked back, he saw PO1 Sanoy aiming a gun at him. He panicked and fell at the Phoenix Gasoline Station. Again, PO1 Sanoy pointed a gun at him, asking why he was very arrogant, while Santos kicked him on the face. Fayo pleaded for mercy but to no avail. Some traffic enforcers and a security guard attempted to intervene but Santos and PO1 Sanoy prevented them. Fayo was then handcuffed and ordered to board the motorcycle driven by Santos, while PO1 Sanoy drove Fayo's vehicle. After a while, they stopped under a bridge at Floodway where they were met by a red Toyota Innova. Fayo was transferred to said vehicle and brought to motorpool and SAID. He was interviewed by PO1 Bueno as to the source of the ₱17,500.00 money recovered from him. He explained that he collected the money from the rent and income of his employer's house and store, but PO1 Bueno, Santos and a certain Major Castillo refused to believe him. The police officers even asked him to produce ₱100,000.00 to avoid the filing of criminal cases against him. When Fayo failed to give the money, he was brought to Karangalan, *Barangay* Manggahan where he was presented to *Barangay* Captain Bobby Bobis (*Barangay* Captain Bobis). At the *barangay* hall, sachets of *shabu*, a gun and grenade were displayed on a table and Fayo was instructed to point at the said items while pictures were being taken. Thereafter, he underwent drug test and medical examination at Mandaluyong City. The following day, he was brought to the Office of the City Prosecutor for inquest proceedings.⁶

The Ruling of the RTC

On January 23, 2017, the RTC rendered a Judgment convicting Fayo for committing illegal sale and possession of dangerous drugs under Sections 5 and 11, Article II of RA 9165.

The dispositive portion of the RTC's Judgment reads:

WHEREFORE:

1. In *Criminal Case No. 20349-D*, the Court finds accused Jeffrey R. Fayo **GUILTY** beyond reasonable doubt of the crime of selling *shabu* penalized under Section 5, Article II of RA 9165, and hereby imposes upon him the penalty of **life imprisonment and a fine of five hundred thousand pesos**

⁶ *Rollo*, pp. 3-7.



(P500,000.00) with all the accessory penalties under the law.

2. In *Criminal Case No. 20350-D*, the Court finds accused Jeffrey R. Fayó **GUILTY** beyond reasonable doubt of violation of Section 11, Article II of RA 9165, and hereby imposes upon him an indeterminate penalty of imprisonment **from twelve (12) years and one (1) day, as minimum, to sixteen (16) years, a maximum, and a fine of three hundred thousand pesos (P300,000.00) with all the accessory penalties under the law.**

The five (5) transparent plastic sachets of *shabu* subject matter of these cases are hereby ordered confiscated in favor of the government and the Branch Clerk of this Court is directed to turn over the said items to the PDEA for destruction in accordance with law.

The commitment of Jeffrey R. Fayó to the Bureau of Corrections in Muntinlupa City is hereby ordered.

SO ORDERED.⁷

The RTC gave full faith and credence to the testimonies of the police officers over Fayó's bare denial and held that all the links in the chain of custody of the seized drugs were established.

Feeling aggrieved, Fayó filed an appeal before the CA.

The Ruling of the CA

In the assailed Decision, the CA affirmed the RTC's conviction of Fayó. The dispositive portion of the assailed Decision reads:

WHEREFORE, the instant appeal is **DENIED**. The January 23, 2017 Judgment of the Regional Trial Court, Branch 164, Pasig City in Crim. Case Nos. 20349-D and 20350-D is **AFFIRMED** with **MODIFICATION** that in Crim. Case No. 20350-D, accused-appellant Jeffrey Fayó y Rubio @ "Jeff" is sentenced to suffer the penalty of imprisonment of 20 years and one (1) day to life imprisonment and a fine of P400,000.00.

SO ORDERED.⁸

⁷ CA rollo, pp. 45-46.

⁸ Rollo, p. 16.



In sum, the CA held that the prosecution was able to prove beyond moral certainty the elements of illegal sale and possession of dangerous drugs.

Hence, the instant appeal.

Issue

Stripped to its core, for the Court's resolution is the issue of whether the RTC and CA erred in convicting Fayo for violating Sections 5 and 11, Article II of RA 9165.

The Court's Ruling

The appeal is meritorious. The Court *acquits* Fayo for failure of the prosecution to prove his guilt beyond reasonable doubt.

Fayo was charged with the crime of illegal sale and possession of dangerous drugs, defined and penalized under Sections 5 and 11, Article II of RA 9165.

In order to convict a person charged with the crime of illegal sale of dangerous drugs under Section 5, Article II of RA 9165, the prosecution is required to prove the following elements: (1) the identity of the buyer and the seller, the object and the consideration; and (2) the delivery of the thing sold and the payment therefor.⁹

On the other hand, illegal possession of dangerous drugs under Section 11, Article II of RA 9165 has the following elements: (1) the accused is in possession of an item or object, which is identified to be a prohibited or regulated drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the drug.¹⁰

In cases involving dangerous drugs, the State bears not only the burden of proving these elements, but also of proving the *corpus delicti* or the body of the crime. In drug cases, the dangerous drug itself is the very *corpus delicti* of the violation of the law.¹¹ While it is true that a buy-bust operation is a legally effective and proven procedure, sanctioned by law, for apprehending drug peddlers and distributors,¹² the law nevertheless also requires **strict compliance** with procedures laid down by it to ensure that rights are safeguarded.

⁹ *People v. Opiana*, 750 Phil. 140, 147 (2015).

¹⁰ *People v. Fernandez*, G.R. No. 198875, June 4, 2014, p. 2 (Unsigned Resolution).

¹¹ *People v. Guzon*, 719 Phil. 441, 451 (2013).

¹² *People v. Mantalaba*, 669 Phil. 461, 471 (2011).



In this connection, Section 21,¹³ Article II of RA 9165, which was amended by RA 10640¹⁴ in 2014, lays down the procedure that police operatives must follow to maintain the integrity of the confiscated drugs used as evidence.

The said provision requires that: (1) **the seized items be inventoried and photographed at the place of seizure or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable**; (2) **the physical inventory and photographing must be done in the presence of (a) the accused or his/her representative or counsel, (b) an elected public official, and (c) a representative of the National Prosecution Service (NPS) or the media**; and (3) **the accused or his/her representative and all of the aforesaid witnesses shall be required to sign the copies of the inventory and be given a copy thereof.**

The strict observance of the aforesaid requirements are a necessity because, with “the very nature of anti-narcotics operations, the need for entrapment procedures, the use of shady characters as informants, the ease with which sticks of marijuana or grams of heroin can be planted in pockets of or hands of unsuspecting provincial hicks, and the secrecy that inevitably shrouds all drug deals, the possibility of abuse is great.”¹⁵

The Court cannot stress enough that the presence of the required witnesses at the time of the inventory and photographing of the seized evidence at the place of seizure or at the nearest police station or at the nearest office of the apprehending officer/team is **mandatory**, and that the law imposes the said requirement because their presence serves an essential

¹³ Section 21 of RA 9165 as amended by RA 10640 reads as follows:

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

(1) The apprehending team having initial custody and control of the dangerous drugs, controlled precursors and essential chemicals, instruments/paraphernalia and/or laboratory equipment shall, immediately after seizure and confiscation, conduct a physical inventory of the seized items 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, with an elected public official and a representative of the National Prosecution Service or the media 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, finally*, That noncompliance of 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 and custody over said items.

x x x.”

¹⁴ 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’” (2014).

¹⁵ *People v. Santos, Jr.*, 562 Phil. 458, 471 (2007), citing *People v. Tan*, 401 Phil. 259, 273 (2000).

purpose. In *People v. Tomawis*,¹⁶ the Court elucidated on the purpose of the law in mandating the presence of the required witnesses as follows:

The presence of the witnesses from the DOJ, media, and from public elective office is necessary to protect against the possibility of planting, contamination, or loss of the seized drug. Using the language of the Court in *People v. Mendoza*,¹⁷ 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 No. 6425 (Dangerous Drugs Act of 1972) again reared their ugly heads as to negate the integrity and credibility of the seizure and confiscation of the subject sachet that was evidence of the *corpus delicti*, and thus adversely affected the trustworthiness of the incrimination of the accused.

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

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

To restate, the presence of the three witnesses at the time of seizure and confiscation of the drugs must be secured and complied with at the time of the warrantless arrest; such that they are required to be at or near the intended place of the arrest so that they can be ready to witness the inventory and photographing of the seized and confiscated drugs “immediately after seizure and confiscation.”¹⁸ (Emphasis supplied)

Concededly, however, Section 21 of RA 9165, as amended, provides that “noncompliance of 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 and custody over said items.”¹⁹

¹⁶ G.R. No. 228890, April 18, 2018, accessed at <<http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64241>>.

¹⁷ 736 Phil. 749 (2014).

¹⁸ *People v. Tomawis*, supra note 16, at 11-12.

¹⁹ Italics and underscoring supplied.

In connection with the foregoing, jurisprudence has held that breaches of the procedure outlined in Section 21 committed by the police officers, left unacknowledged and unexplained by the State, militate against a finding of guilt beyond reasonable doubt against the accused as the integrity and evidentiary value of the *corpus delicti* would necessarily have been compromised.²⁰ As the Court explained in *People v. Reyes*:²¹

Under the last paragraph of Section 21(a), Article II of the IRR of R.A. No. 9165, a saving mechanism has been provided to ensure that not every case of non-compliance with the procedures for the preservation of the chain of custody will irretrievably prejudice the Prosecution's case against the accused. **To warrant the application of this saving mechanism, however, the Prosecution must recognize the lapse or lapses, and justify or explain them. Such justification or explanation would be the basis for applying the saving mechanism.** Yet, the Prosecution did not concede such lapses, and did not even tender any token justification or explanation for them. **The failure to justify or explain underscored the doubt and suspicion about the integrity of the evidence of the *corpus delicti*.** With the chain of custody having been compromised, the accused deserves acquittal.²² (Emphasis supplied)

Otherwise, excusing the non-observance of Section 21 of RA 9165 without any justifiable ground proffered by the prosecution would reduce the aforesaid provision of law into a useless and nugatory provision.

In the instant case, it is not disputed that the authorities failed to comply with Section 21 of RA 9165 when they conducted the subject buy-bust operation.

First, it is beyond dispute that there was **no representative from the NPS or media who witnessed the inventory of the alleged seized evidence and the photographing of the same.** As readily acknowledged by the RTC, “[n]o representative from the National Prosecution Service and/or media came.”²³

To reiterate, under Section 21 of RA 9165, as amended, aside from an elected public official, a representative of the NPS or the media should be there to witness the physical inventory of the alleged seized items and photographing of the same.

A careful review of the records shows that the testimonies of the prosecution's witnesses **do not offer any justifiable reason** why the presence of a representative from the NPS or media was not obtained.

²⁰ See *People v. Sumili*, 753 Phil. 342 (2015).

²¹ 797 Phil. 671 (2016).

²² Id. at 690.

²³ CA rollo, p. 44.

To stress, breaches of Section 21 committed by the authorities, if left unacknowledged and unexplained, militate against a finding of guilt beyond reasonable doubt against the accused as the integrity and evidentiary value of the *corpus delicti* would necessarily have been compromised. To simply dismiss the mandatory requirement of the presence of a representative of the NPS or media as witnesses to the mandatory inventory and photographing procedures immediately after buy-bust operations thereafter as a trivial and excusable requirement would be to negate the clear legislative intent of Section 21 of RA 9165, as amended.

To recall, prior to the amendment of Section 21 of RA 9165 under RA 10640 in 2014, the following witnesses were required to witness the inventory and photographing procedures: (1) the accused or his/her representative or counsel, (2) an elected public official, (3) a representative from the media, and (4) a representative from the Department of Justice (DOJ).

However, in order to prevent the dismissal of drug cases due to the failure of law enforcers to follow the stringent requirements of Section 21, Congress saw fit to reduce the required witnesses to: (1) the accused or his/her representative or counsel, (2) an elected public official, and (3) a representative from the NPS *or* the media.²⁴

Therefore, in passing RA 10640, Congress, in the exercise of its legislative power, *deliberately decided to retain* the mandatory requirement of securing a representative of the NPS or media as witnesses. To simply do away with the said requirement without any justifiable reason would be to unduly supplant the legislative intent of RA 9165, as amended by RA 10640.

The authorities cannot now bemoan that the securing of the presence of a representative of the NPS or media as witnesses is too strict a rule because, with the passage of RA 10640, the strict requirement on the presence of witnesses was already made less stringent and cumbersome in order to aid the police in complying with Section 21.

Second, it is also an admitted fact that **the inventory and photographing of the allegedly seized drug specimen were undertaken at the Barangay Hall of Manggahan and not at the place of the seizure or the nearest police station/office of the apprehending team.**

To emphasize, RA 9165 restrictively enumerates the places where the inventory and photographing of the seized drug specimen can be done: (1) at the place of seizure; (2) at the nearest police station; or (3) at the nearest office of the apprehending officer/team, whichever is practicable. *Expressio unius est exclusio alterius* – when the law makes an enumeration, those not included are excluded. Clearly, the law does not allow the inventory and

²⁴ See Committee Report No. 88 on House Bill Number 2285, House of Representatives, 16th Congress.

photographing to be done at the barangay hall or office of any of the witnesses.

With the undisputed fact that Section 21 of RA 9165, as amended, was transgressed, it was incumbent upon the prosecution to provide a justifiable reason warranting the non-observance of the law.

According to the CA, “the police officers offered a valid justification for their failure to conduct the inventory and photograph of the seized *shabu* at the police station.”²⁵ The CA believed that there was a justifiable reason because “PO1 Bueno testified that the inventory and photograph were done at the *barangay* hall upon the instance of *Barangay* Captain Bobis.”²⁶

Needless to say, the prosecution’s sheer justification that the barangay captain insisted that the inventory and photographing be done in the barangay hall is *a lame and unavailing excuse that deserves scant consideration*. The elected public official is merely a *witness* to the inventory and photographing of the seized drug specimens. He/she does not have the authority to prevail and dictate upon the apprehending team as to where the inventory and photographing should take place.

Further, the *Guidelines on the Implementing Rules and Regulations of Section 21 of RA 9165 as amended by RA 10640* likewise state that “[t]he elected public official is any incumbent public official regardless of the place where he/she is elected.”²⁷ Hence, the authorities are not limited to seeking assistance from the local barangay captain. Therefore, if the barangay captain would not agree to witness the inventory and photographing at the place of seizure, then the apprehending team could have secured the presence of any other public official.

Hence, the apprehending team’s decision to undertake the inventory and photographing in the barangay hall based solely on the insistence of the barangay captain is unwarranted.

The Last Word

On a final note, the Court observed that both the RTC and CA, in putting much reliance on the presumption of regularity of the police operations, seriously overlooked the long-standing legal tenet that the starting point of every criminal prosecution is that the accused has the constitutional right to be presumed innocent.²⁸ And this presumption of innocence is overturned only when the prosecution has discharged its burden of proof in criminal cases that it has proven the guilt of the accused beyond

²⁵ *Rollo*, p. 14.

²⁶ *Id.*

²⁷ Sec. A.1.6.

²⁸ CONSTITUTION, Art. III, Sec. 14, par. (2): “In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved x x x.”

reasonable doubt,²⁹ with each and every element of the crime charged in the information proven to warrant a finding of guilt for that crime or for any other crime necessarily included therein.³⁰ Differently stated, there must exist no reasonable doubt as to the existence of each and every element of the crime to sustain a conviction.

It is worth emphasizing that this burden of proof never shifts. Indeed, the accused need not present a single piece of evidence in his defense if the State has not discharged its onus. The accused can simply rely on his right to be presumed innocent.

In this connection, the prosecution therefore, in cases involving dangerous drugs, always has the burden of proving compliance with the procedure outlined in Section 21. As the Court stressed in *People v. Andaya*:³¹

x x x We should remind ourselves that we cannot presume that the accused committed the crimes they have been charged with. The State must fully establish that for us. If the imputation of ill motive to the lawmen is the only means of impeaching them, then that would be the end of our dutiful vigilance to protect our citizenry from false arrests and wrongful incriminations. We are aware that there have been in the past many cases of false arrests and wrongful incriminations, and that should heighten our resolve to strengthen the ramparts of judicial scrutiny.

Nor should we shirk from our responsibility of protecting the liberties of our citizenry just because the lawmen are shielded by the presumption of the regularity of their performance of duty. The presumed regularity is nothing but a purely evidentiary tool intended to avoid the impossible and time-consuming task of establishing every detail of the performance by officials and functionaries of the Government. Conversion by no means defeat the much stronger and much firmer presumption of innocence in favor of every person whose life, property and liberty comes under the risk of forfeiture on the strength of a false accusation of committing some crime.³² (Emphasis and underscoring supplied)

The Court cannot stress enough that the accused can rely on his right to be presumed innocent. It is thus immaterial, in this case or in any other cases involving dangerous drugs, that the accused put forth a weak defense.

Considering the foregoing premises, with the noncompliance of the requirements mandated under Section 21 of RA 9165, as amended, not being justified, the seizures and custody of the alleged drug specimens are

²⁹ The Rules of Court provides that proof beyond reasonable doubt does not mean such a degree of proof as excluding possibility of error, produces absolute certainty. Only moral certainty is required, or that degree of proof which produces conviction in an unprejudiced mind. (RULES OF COURT, Rule 133, Sec. 2)

³⁰ *People v. Belocura*, 693 Phil. 476, 503-504 (2012).

³¹ 745 Phil. 237 (2014).

³² Id. at 250-251.

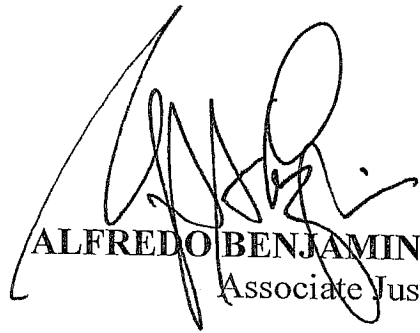
rendered void. Therefore, the conviction of Fayó for violations of Sections 5 and 11 of RA 9165 does not have a leg to stand on.

Fayo must perforce be acquitted.

WHEREFORE, in view of the foregoing, the appeal is hereby **GRANTED**. The Decision dated January 25, 2018 of the Court of Appeals in CA-G.R. CR-HC No. 09060 is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant Jeffrey Fayó y Rubio a.k.a. "Jeff" is **ACQUITTED** of the crimes charged on the ground of reasonable doubt, and is **ORDERED IMMEDIATELY RELEASED** from detention unless he is being lawfully held for another cause. Let an entry of final judgment be issued immediately.

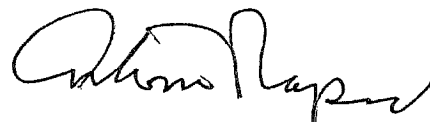
Let a copy of this Decision be furnished the Superintendent of the New Bilibid Prison, Muntinlupa City, for immediate implementation. The said Superintendent is **ORDERED** to **REPORT** to this Court within five (5) days from receipt of this Decision the action he has taken.

SO ORDERED.




ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

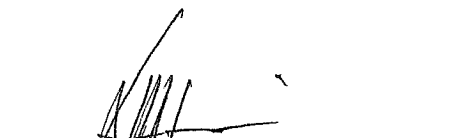
WE CONCUR:




ANTONIO T. CARPIO
Associate Justice
Chairperson



RAMON PAUL L. HERNANDO
Associate Justice



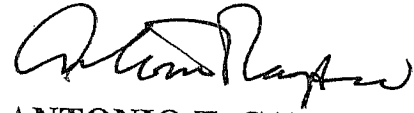
AMY C. LAZARO-JAVIER
Associate Justice



RODIL V. ZALAMEDA
Associate Justice

ATTESTATION

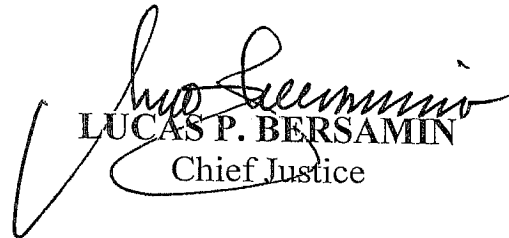
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

**ANTONIO T. CARPIO**

Associate Justice
Chairperson, Second Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



LUCAS P. BERSAMIN
Chief Justice

