

FIRST DIVISION

G.R. No. 252154 — PEOPLE OF THE PHILIPPINES, *plaintiff-appellee*,
versus TAMIL SELVI VELOO and N. CHANDRAR NADERAJAN,
accused-appellants.

Promulgated:

MAR 24 2021

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CONCURRING OPINION

CAGUIOA, J.:

I concur in the conviction of the accused-appellants Tamil Selvi Veloo and N. Chandrar Naderajan (the accused-appellants) for one (1) count of violation of Section 5, Republic Act (R.A.) No. 9165.

I offer the following thoughts, however, due to the points raised during the deliberations for this case.

Chain of custody is a manner of authentication of real evidence; hence, it goes into admissibility, not evidentiary weight.

In the course of the deliberations, it was argued that the failure to strictly comply with Section 21 of R.A. No. 9165 does not necessarily render the seized items inadmissible, as the degree of compliance merely affects the evidentiary weight thereof. In other words, it was intimated that chain of custody is an issue of *probative weight*, instead of *admissibility* of evidence.

The argument is incorrect.

Chain of custody is a method of *authenticating* object or real evidence. “For the object not to be excluded by the Rules, the same must pass the test of authentication.”¹ Chain of custody is “but a variation of the principle that real evidence must be authenticated prior to its admission into evidence.”²

“To authenticate the object, there must be someone who should identify the object to be the actual thing involved in the litigation x x x [because] [a]n

¹ WILLARD B. RIANO, EVIDENCE (2013 edition), p. 186.

² *People v. Lim*, G.R. No. 231989, September 4, 2018, accessed at <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64400>>.



object evidence, being inanimate, cannot speak for itself. It cannot present itself to the court as an exhibit.”³ In *Malillin v. People*⁴ (*Malillin*), the Court said:

As a **method of authenticating evidence**, the chain of custody rule requires that **the admission of an exhibit be preceded by evidence sufficient to support a finding that the matter in question is what the proponent claims it to be**. It would include testimony about every link in the chain, from the moment the item was picked up to the time it is offered into evidence, in such a way that every person who touched the exhibit would describe how and from whom it was received, where it was and what happened to it while in the witness’ possession, the condition in which it was received and the condition in which it was delivered to the next link in the chain. These witnesses would then describe the precautions taken to ensure that there had been no change in the condition of the item and no opportunity for someone not in the chain to have possession of the same.⁵ (Emphasis and underscoring supplied)

This is a rule imported from the Federal Rules of Evidence (Rule 901), “which requires that the admission of an exhibit must be preceded by ‘evidence sufficient to support a finding that the matter in question is what its proponent claims.’”⁶ Proving chain of custody is therefore a requirement whenever object evidence is material in criminal cases, and not just in proving the authenticity of dangerous drugs. Chain of custody, for instance, is a relevant issue in cases involving illegal possession of firearms.⁷

The requirement of chain of custody, however, finds more substantial significance in cases involving dangerous drugs because a “unique characteristic of narcotic substances is that they are not readily identifiable as in fact they are subject to scientific analysis to determine their composition and nature.”⁸ In the classification of object evidence, narcotics are considered as “non-unique objects,” as opposed to unique objects which have readily identifiable characteristics, like a gun which has a serial number.

Because of the nature of dangerous drugs being non-unique objects, the legislature saw it fit to establish a chain of custody rule that is specific to dangerous drugs cases. Again, in *Malillin*, the Court said that “in authenticating the same, a standard more stringent than those applied to cases involving objects which are readily identifiable must be applied, a more exacting standard that entails a chain of custody of the item[s] with sufficient completeness if only to render it improbable that the original [items have] either been exchanged with another or been contaminated or tampered with.”⁹

³ WILLARD B. RIANO, EVIDENCE (2013 edition), pp. 186-187.

⁴ G.R. No. 172953, April 30, 2008, 553 SCRA 619.

⁵ Id. at 632-633.

⁶ *United States of America v. Ricco*, 52 F.3d 58, 619 (1995).

⁷ See *Dela Cruz v. People*, G.R. No. 222819, July 4, 2016.

⁸ *Malillin v. People*, supra note 4, at 634.

⁹ Id.



It is against this backdrop that I insist that the requirements under Section 21 of R.A. No. 9165 are exclusionary rules of evidence, and thus non-compliance therewith affects admissibility, not the evidentiary weight, of evidence. Between providing for rules on admissibility, on the one hand, and identifying indicators of evidentiary weight, on the other, it is the latter over which the Judiciary has exclusive prerogative. In other words, what Congress can legislate on are *substantive rules of admissibility* and not indicators of evidentiary weight which is within the discretion of courts to determine.

Another reason is that the “saving clause” found in the Implementing Rules and Regulations (IRR) of R.A. No. 9165 states 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.”¹⁰ Under the aforementioned rule, non-compliance without justifiable grounds renders the seizure of the items “void.” The IRR speaks of outright nullity and invalidity, which is more akin to the concept of inadmissibility rather than simply *reduced* evidentiary weight.

As well, the Court, through *People v. Lim*¹¹ (*Lim*) and a host of other cases, has emphasized that strict adherence with Section 21 is the rule, and non-compliance the exception which, in turn, imposes obligations on the State agents to explain their deviations from the general rule. Ruling that evidence obtained and stored in violation of Section 21 may still be admissible, although with reduced evidentiary weight, will undoubtedly dilute the Court’s directive to State agents to strictly comply with Section 21.

The conviction of the accused-appellants

As regards the conviction of the accused-appellants in this case, I thus agree that the same should be upheld because the dangerous drugs seized from them are *admissible* in evidence. It is well-established in the cases the Court has decided that while strict compliance with the requirements of Section 21, R.A. No. 9165 is mandatory, the Court may also, **in exceptional cases**, “allow non-compliance with these requirements, provided the following requisites are present: (1) the existence of **justifiable grounds** to allow departure from the rule on strict compliance; and (2) the integrity and the evidentiary value of the seized items are properly preserved by the apprehending team.”¹²

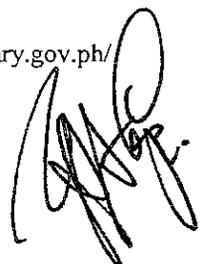
The Court already stated in *Lim* that:

It bears emphasis that the rule that strict adherence to the mandatory requirements of Section 21 (1) of R.A. No. 9165, as amended, and its IRR may be excused as long as the integrity and the evidentiary value of the

¹⁰ IRR of R.A. No. 9165, Sec. 21(a). Emphasis supplied.

¹¹ *Supra* note 2.

¹² *De Villa v. People*, G.R. No. 224039, September 11, 2019, accessed at <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65728>>.



confiscated items are properly preserved applies not just on arrest and/or seizure by reason of a legitimate buy-bust operation **but also on those lawfully made in air or sea port**, detention cell or national penitentiary, checkpoint, moving vehicle, local or international package/parcel/mail, or those by virtue of a consented search, stop and frisk (*Terry search*), search incident to a lawful arrest, or application of plain view doctrine where time is of the essence and the arrest and/or seizure is/are not planned, arranged or scheduled in advance.¹³ (Emphasis supplied)

This case is an example of when justifiable grounds are present.

To recall, the present case did not involve a buy-bust operation. Instead, what was involved was an *in flagrante delicto* arrest following an airport search, or what the Court of Appeals in this case called a “spur-of-the-moment” seizure. In *De Villa v. People*,¹⁴ where the accused was caught *in flagrante delicto* in a checkpoint, the Court held that “[t]here was no buy-bust operation conducted by the police officers, but a mere routine check. Thus, there is sufficient justification for their slight deviation from the rules in Section 21.” Moreover, the opening of the bag was done in a crowded place — an airport — and therefore was observed by a number of witnesses. Finally, officers from the Bureau of Customs also witnessed the inventory, and they are State agents comparable to the members of the Department of Justice (DOJ). They may thus be held to take the place of the representative from the DOJ as part of the insulating witnesses.

From the foregoing, it is thus my view that the slight departures from the rule on strict compliance may be allowed in this case **considering the totality of circumstances**. Stated differently, the **combination** of the foregoing circumstances in this case justifies the deviation from Section 21, R.A. No. 9165. To be clear, it is not *per se* the fact that this case did not involve a buy-bust operation which justifies the non-compliance. Such fact, however, may be taken into consideration along with other facts that can be considered justifiable grounds in order to trigger the “saving clause” under the IRR.

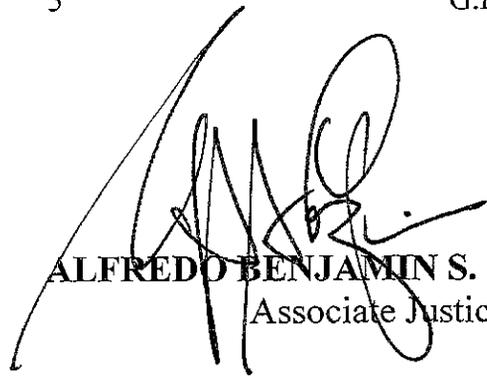
Verily, Section 21 is and should still be considered an exclusionary rule of evidence, and non-compliance therewith affects the admissibility of evidence. That said, I vote for the conviction in this case not because the absence of the DOJ representative only affected the evidentiary weight — but rather, because the seized items here are admissible since the “saving clause” was triggered due to the existence of justifiable grounds for the non-compliance, and the fact that their integrity had been sufficiently shown to have been preserved.

Considering the foregoing, I vote to **DENY** the accused-appellants’ appeal.

¹³ *People v. Lim*, supra note 2.

¹⁴ Supra note 12.



A handwritten signature in black ink, consisting of stylized, overlapping letters that appear to read 'ABC'.

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice