Republic of the Philippines
Supreme Court
Bacolod City

EN BANC

MARIO NISPEROS y PADILLA,
Petitioner,

- *versus* -

PEOPLE OF THE PHILIPPINES,
Respondent.

G.R. No. 250927

Present:

GESMUNDO, *C.J.*,
LEONEN,
CAGUIOA,
HERNANDO,
LAZARO-JAVIER,
INTING,
ZALAMEDA,
LOPEZ, M.,
GAERLAN,
ROSARIO,
LOPEZ, J.,
DIMAAMPAO,*
MARQUEZ,**
KHO, JR., and
SINGH, *JJ.*

Promulgated:

November 29, 2022

x - x

DECISION

ROSARIO, *J.*:

In warrantless arrests on account of buy-bust operations, the required witnesses must be present "at or near" the place of apprehension, *i.e.*, within the vicinity, in order to comply with the statutory rule that the inventory should be conducted immediately after the seizure and confiscation. Since

* On official leave.
** On official business.

they may be present "near" the place of apprehension, they need not witness the arrest itself or the seizure or confiscation of the drugs or drug paraphernalia. They only need to be readily available to witness the immediately ensuing inventory.

Petitioner Mario Nisperos y Padilla (petitioner) assails in his Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court the Decision[2] dated August 5, 2019 and the Resolution[3] dated November 7, 2019 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 11472, which affirmed the Judgment[4] dated March 13, 2018 and Resolution[5] dated April 23, 2018 of the Regional Trial Court (RTC) of Tuguegarao City, Cagayan, Branch 1 in Crim. Case No. 17489 convicting him for Violation of Section 5, Article II of Republic Act (R.A.) No. 9165, or the Comprehensive Dangerous Drugs Act of 2002.

I

Petitioner was charged with violation of Sec. 5[6] of R.A. No. 9165[7] in an Information[8] dated September 18, 2015, the accusatory portion of which reads:

> *That on June 30, 2015, in the City of Tuguegarao, Province of Cagayan, and within the jurisdiction of this Honorable Court, the accused* ***MARIO NISPEROS y PADILLA****, without authority of law and without any permit to sell, transport, deliver, and distribute dangerous drugs, did then and there, willfully, unlawfully, and feloniously, sell and distribute one (1) piece heat(-)sealed transparent plastic sachet containing* ***METHAMPHETAMINE HYDROCHLORIDE****, commonly known as 'shabu', a* ***dangerous drug weighing 0.7603 grams, to PO1 MICHAEL B. TURINGAN,*** *who is a member of the PNP, assigned at the 2nd Regional Public Safety Batallion (2PRSB) based at Camp Adduru, Tuguegarao City, and who acted as poseur(-)buyer; that when the accused handed to the poseur(-)buyer the heat-sealed transparent plastic sachet containing the dangerous drugs, the poseur(-)buyer in turn gave to the accused the agreed purchase price of the dangerous drugs in the amount of* ***[₱]3,000.00, consisting of two (2) pieces genuine [₱]500.00 peso-bill bearing Serial Nos. BU211023 and CH966702,*** *and two (2) pieces fake [₱]1,000.00 peso-*

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1 *Rollo*, pp. 12-31.

2 Id. at 33-60. Penned by Associate Justice Celia C. Librea-Leagogo, and concurred in by Associate Justices Edwin D. Sorongon and Geraldine C. Fiel-Macaraig.

3 Id. at 62-63.

4 No copy was attached to the Petition, but see CA Decision, *rollo*, p. 33.

5 No copy was attached to the Petition, but see CA Decision, *rollo*, p. 33.

6 **Section 5.** *Sale, Trading, Administration, Dispensation, Delivery, 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 of such transactions.

7 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.

8 *Rollo*, pp. 34-35.

bill both bearing Serial No. CY118978 which were previously marked and used as buy-bust money; that this led to the immediate arrest of the accused and the recovery of the buy-bust money from his possession, control, and custody along Soriano Street, Pallua Norte, this city, by members of the PNP assigned at the 2nd Regional Public Safety Batallion (2PRSB), Camp Adduru, this city, who formed the buy-bust team, and who acted in coordination with the Philippine Drug Enforcement Agency (PDEA), Regional Office No. 2, Camp Marcelo Adduru, Tuguegarao City; that the buy-bust operation also led to the confiscation of the dangerous drugs.

CONTRARY TO LAW.[9] (Emphasis in the original.)

When arraigned, petitioner entered a plea of NOT GUILTY to the offense charged.[10]

According to the evidence for the prosecution, PO1 Michael Turingan was designated as *poseur*-buyer in a buy-bust operation conducted pursuant to information provided by a confidential informant that a certain "Junjun" of Pallua, Tuguegarao City was selling *shabu* and looking for a possible buyer. PO1 Turingan was introduced as the buyer of the ordered *shabu* to petitioner who handed to him one (1) heat-sealed transparent plastic sachet containing a white crystalline substance. PO1 Turingan handed petitioner the buy-bust money which was later recovered from the latter when bodily searched by PO1 Derel Sunico. An inventory was subsequently conducted at the place of transaction in the presence of petitioner, Department of Justice (DOJ) representative Ferdinand Gangan and Barangay Captain Desiderio Taguinod. Gangan testified that the item was unmarked when the same was first presented to them during the inventory. Hence, PO1 Turingan marked the sachet in front of him. The specimen was then turned over to PO2 Edmar Delayun of the crime laboratory who, in turn, transmitted the same to forensic chemist PSI Alfredo Quintero, who conducted the qualitative examination thereon which yielded a positive result for methamphetamine hydrochloride. Thereafter, PSI Quintero brought the specimen to the trial court where it was presented and identified by PO1 Turingan, formally offered, and admitted in evidence.[11]

For the part of the defense, petitioner denied the allegations contained in the Affidavit of the *poseur*-buyer for being fabricated and unfounded. He also testified that the chain of custody rule was not properly observed.[12]

After trial on the merits, the RTC promulgated its Judgment dated March 13, 2018 finding petitioner guilty beyond reasonable doubt of the offense charged and sentencing him to suffer life imprisonment and to pay a fine of ₱500,000.00. It thereafter denied his motion for reconsideration.[13]

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9 Id.
10 Id. at 35.
11 Id. at 35-36.
12 Id. at 39-41.
13 Id. at 41.

On appeal,[14] the CA, in its assailed Decision[15] dated August 5, 2019, found that the prosecution was able to establish beyond reasonable doubt all the elements of illegal sale of *shabu*. Further, the identity and evidentiary value of the seized illegal drug were properly preserved by the apprehending team.[16] It affirmed petitioner's conviction with modification as follows:

> **WHEREFORE**, premises considered, the appeal is **DENIED**. The Judgment dated 13 March 2018 and Resolution dated 23 April 2018 of the Regional Trial Court of Tuguegarao City, Cagayan, Branch 01 in *Crim. Case No. 17489*, finding accused-appellant Mario Nisperos y Padilla guilty beyond reasonable doubt of violation of Section 5, Article II of Republic Act No. 9165, as amended, and sentencing him to suffer the penalty of life imprisonment, and to pay a fine in the amount of Php500,000.00, are **AFFIRMED** with **MODIFICATION** in that he shall not be eligible for parole.
>
> **SO ORDERED.**[17]

The CA also denied petitioner's motion for reconsideration in its assailed Resolution[18] dated November 7, 2019.

Hence, this Petition for Review on *Certiorari* on the following grounds:

> I. The CA failed to consider the fact that the purported witnesses to the alleged inventory were not present at the time of the purported warrantless arrest of the herein petitioner;
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> II. The CA failed to consider the apparent failure of the purported members of the buy-bust team to make the immediate initial marking of the alleged evidences;
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> III. The CA failed to consider the apparent failure of the prosecution to prove the proper link in the chain of custody;
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> IV. The CA failed to consider the failure of the purported buy-bust team to strictly follow the supposed chain of custody, *i.e.*, failure to give the same alleged dangerous drug to the investigator; and
>
> V. The CA failed to consider the legal implication of the failure of the purported buy-bust team to give a copy of the Receipt/s of Property Seized to the herein petitioner and the purported witnesses to the inventory.[19]

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14 See CA Decision, *rollo*, p. 41.
15 *Rollo*, pp. 33-60.
16 Id. at 54-55.
17 Id. at 56.
18 Id. at 62-63.
19 Id. at 16-17.

In summary, petitioner argues that the apprehending team failed to strictly follow the chain of custody rule as laid down in Sec. 21[20] of R.A. No. 9165, as amended by R.A. No. 10640,[21] and its Implementing Rules and Regulations[22] (IRR).

II

Considering that the CA imposed the penalty of life imprisonment, petitioner should have filed a notice of appeal before the CA and not a petition for review on *certiorari* before this Court.[23] Nonetheless, in the interest of substantial justice, We shall excuse the procedural *faux pas* and treat the petition as an ordinary appeal.

We further note that the petition was filed with a docket fee payment deficiency of ₱80.00 and lacks certified true copies of the assailed Decision and Resolution of the CA, which, under Sec. 5,[24] Rule 45 of the Rules of Court, are sufficient grounds for the dismissal thereof. However, We have, in

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20 "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
"(3) A certification of the forensic laboratory examination results, which shall be done by the forensic laboratory examiner, shall be issued immediately upon the receipt of the subject item/s: *Provided,* That when the volume of dangerous drugs, plant sources of dangerous drugs, and controlled precursors and essential chemicals does not allow the completion of testing within the time frame, a partial laboratory examination report shall be provisionally issued stating therein the quantities of dangerous drugs still to be examined by the forensic laboratory: *Provided, however,* That a final certification shall be issued immediately upon completion of the said examination and certification;
"x x x."

21 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."

22 IMPLEMENTING RULES AND REGULATIONS OF REPUBLIC ACT NO. 9165, OTHERWISE KNOWN AS "COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002," AS AMENDED BY REPUBLIC ACT NO. 10640.

23 RULES OF COURT, Rule 124, Section 13(c).

24 Section 5. *Dismissal or denial of petition.* – The failure of the petitioner to comply with any of the foregoing requirements regarding the payment of the docket and other lawful fees, deposit for costs, proof of service of the petition, and the contents of and the documents which should accompany the petition shall be sufficient ground for the dismissal thereof.
The Supreme Court may on its own initiative deny the petition on the ground that the appeal is without merit, or is prosecuted manifestly for delay, or that the questions raised therein are too unsubstantial to require consideration.

the past, glossed over such procedural defects[25] especially when the petition is meritorious, as in the case at bench.

III

In the prosecution of drugs cases, the procedural safeguards under the chain of custody procedure embodied in Sec. 21 of R.A. No. 9165, as amended by R.A. No. 10640, are material, as their compliance affects the *corpus delicti* which is the dangerous drug, controlled precursor, essential chemical, drug instrument or paraphernalia, and/or laboratory equipment itself, and warrants the identity and integrity of said item/s seized by the apprehending officers.[26] Chain of custody refers to the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction.[27] Failure to comply, however, with Sec. 21 shall not render void and invalid the seizure of illegal drugs or items provided that (a) there is a justifiable ground for non-compliance and (b) the integrity and evidentiary value of the seized items are properly preserved.[28]

The mandatory witnesses must be present <u>at or near</u> the place of apprehension in order for the immediate conduct of the inventory.

In alleging failure of the buy-bust team to comply with the chain of custody rule, petitioner asserts that the required witnesses were not present at

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25 *Dela Cruz v. People*, 739 Phil. 578 (2014) [Per C.J. Sereno, First Division].

26 *Tolentino v. People*, G.R. No. 227217, February 12, 2020 [Per J. A. Reyes, Jr., Second Division].

27 *People v. Moner*, 827 Phil. 42, 54 (2018) [Per J. Leonardo-De Castro, First Division].

28 R.A. No. 10640, Section 1, reads:
SECTION 1. Section 21 of Republic Act No. 9165, otherwise known as the "Comprehensive Dangerous Drugs Act of 2002", is hereby amended to read 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

the time of his arrest. He cites *People v. Supat*[29] where We ruled that "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."

Similarly, in *People v. Tomawis*,[30] We held that since the phrase "immediately after seizure and confiscation" means that the inventory and taking of photographs of the drugs were intended by the law to be made immediately after said seizure, it follows that the witnesses required to be present during the inventory should already be present at the time of apprehension—a requirement that can easily be complied with considering that a buy-bust operation is a planned activity.[31] We emphasized that:

> 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."[32]

We are not unmindful of the fact that the presence of the mandatory witnesses at the time of apprehension may pose a serious risk to their lives and to the buy-bust operation. However, since they may also be present "near" and not necessarily "at" the place of apprehension, We stress that they are not required to witness the arrest and the seizure or confiscation of the drugs or drug paraphernalia. They need only be readily available to witness the immediately ensuing inventory.

Here, while the purported sale transpired at 11:30 AM of June 30, 2015, the inventory took place half an hour later. While Barangay Captain Taguinod was already present at the place of transaction, DOJ representative Gangan arrived only at 12 noon. Without his presence, the inventory could not be conducted for lack of one required witness. Given that the inventory was done at the place of seizure and did not need to be performed at the nearest police station or the nearest office of the apprehending team, the buy-bust team should have been able to conduct the same immediately after the seizure, were it not for the tardy arrival of the DOJ representative. Certainly, his late arrival is not a justifiable ground for the delay. The buy-bust team only had itself to blame for not ensuring that all required witnesses were readily available for them to be able to immediately conduct the inventory.

We find, therefore, that the buy-bust team unjustifiably deviated from the chain of custody rule when only one of the mandatory witnesses was readily available at the place of transaction, thus constraining the buy-bust

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29 832 Phil. 590, 593 (2018) [Per J. Caguioa, Second Division].
30 830 Phil. 385 (2018) [Per J. Caguioa, Second Division].
31 Id. at 405.
32 Id. at 409.

team to conduct the inventory only half an hour after the seizure and confiscation of the drugs.

IV

Marking is the first stage in the chain of custody[33] and serves to separate the marked evidence from the *corpus* of all other similar or related evidence from the time they are seized from the accused until they are disposed of at the end of the criminal proceedings, thus preventing switching, "planting," or contamination of evidence.[34] While the rule on marking is not found in statute, Dangerous Drugs Board (DDB) Regulation No. 1, Series of 2002, requires that the seized item/s be properly marked for identification.[35] The Philippine Drug Enforcement Agency (PDEA) Guidelines on the IRR of Section 21 of R.A. No. 9165 likewise require that the apprehending or seizing officer mark the seized item/s immediately upon seizure and confiscation.[36] Administrative rules and regulations have the force and effect of law.[37] When promulgated in pursuance of the procedure or authority conferred upon the administrative agency by law, rules and regulations partake of the nature of a statute.[38] The Court has stated the rationale for this in the following manner:

> This is so because statutes are usually couched in general terms, after expressing the policy, purposes, objectives, remedies and sanctions intended by the legislature. The details and the manner of carrying out the law are often times left to the administrative agency entrusted with its enforcement. In this sense, it has been said that rules and regulations are the product of a delegated power to create new or additional legal provisions that have the effect of law.[39]

In *People v. Sanchez*,[40] We emphasized when and in whose presence marking must be conducted:

> Consistency with the "chain of custody" rule requires that the "marking" of the seized items – to truly ensure that they are the same items that enter the chain and are eventually the ones offered in evidence – should be done (1) **in the presence of the apprehended violator** (2) **immediately upon confiscation**. This step initiates the process of protecting innocent persons from dubious and concocted searches, and of protecting as well the

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33 *People v. Siaton*, 789 Phil. 87, 100 (2016) [Per J. Perez, Third Division].

34 *People v. Alejandro*, 671 Phil. 33, 46 (2011) [Per J. Brion, Second Division].

35 Dangerous Drugs Board Regulation No. 1, Series of 2002, Section 2(b), reads:
b. The drugs or controlled chemicals or laboratory equipment shall be properly marked for identification, weighed when possible or counted, sealed, packed and labeled by the apprehending officer/team.

36 Guidelines on the IRR of Section 21 of REP. ACT NO. 9165, as amended, Section 1(A.1).

37 *Tayug Rural Bank v. Central Bank of the Philippines*, 230 Phil. 216, 223-224 (1986) [Per J. Paras, Second Division].

38 *Victorias Milling Company, Inc. v. Social Security Commission*, 114 Phil. 555, 558 (1962) [Per J. Barrera, En Banc] citing DAVIS, ADMINISTRATIVE LAW, p. 194.

39 Id., citing DAVIS, ADMINISTRATIVE LAW, p. 194.

40 590 Phil. 214 (2008), 569 SCRA 194, 220 [Per J. Brion, Second Division] cited by *Dolera v. People*, 614 Phil. 655, 668 (2009); *People v. Resurreccion*, 618 Phil. 520, 531 (2009); *People v. Pagaduan*, 641 Phil. 432, 448-450 (2010); *People v. Martinez*, 652 Phil. 347, 377 (2010); *People v. Alcuizar*, 662 Phil. 794, 801 (2011); *People v. Somoza*, 714 Phil. 368, 388 (2013); *People v. Asaytuno*, G.R. No. 245972, December 2, 2019, 926 SCRA 613, 633.

> apprehending officers from harassment suits based on planting of evidence under Section 29 and on allegations of robbery or theft. (Emphasis in the original.)

It is undisputed in this case that the *poseur*-buyer failed to mark the seized items immediately upon confiscating it. In fact, they were only marked during the inventory itself.[41] No justifiable ground was proffered to excuse the belated marking. Since the first link of the chain was not even established, We find it unnecessary to discuss the other links of the chain. Verily, there was no chain to even speak of. With the belated marking and conduct of the inventory of the seized drugs, the integrity and evidentiary value of the *corpus delicti* are seriously compromised and the acquittal of petitioner is warranted.

V

In order to guide the bench, the bar, and the public, particularly our law enforcement officers, the Court hereby adopts the following guidelines:

1. The marking of the seized dangerous drugs[42] must be done:

    a. Immediately *upon* confiscation;

    b. At the place of confiscation; and

    c. In the presence of the offender (unless the offender eluded the arrest);

2. The conduct of inventory and taking of photographs of the seized dangerous drugs[43] must be done:

    a. Immediately *after* seizure and confiscation;

    b. 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; and

    c. Also in the presence of the insulating witnesses, as follows:

        i. if the seizure occurred during the effectivity of R.A. No. 9165, or from July 4, 2002[44] until August 6, 2014, the presence of three (3) witnesses, namely, an elected

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41 *Rollo*, p. 38.

42 If after the effectivity of R.A. No. 10640 on August 7, 2014, to include controlled precursors and essential chemicals, instruments/paraphernalia and/or laboratory equipment.

43 If after the effectivity of R.A. No. 10640 on August 7, 2014, to include controlled precursors and essential chemicals, instruments/paraphernalia and/or laboratory equipment.

44 REP. ACT NO. 9165 took effect fifteen (15) days after its publication in the Manila Times and Manila Standard on June 19, 2002, *i.e.*, on July 4, 2002.

public official; a Department of Justice (DOJ) representative; *and* a media representative;

ii. if the seizure occurred after the effectivity of R.A. No. 10640, or from August 7, 2014[45] onward, the presence of two (2) witnesses, namely, an elected public official; and a National Prosecution Service representative *or* a media representative.

3. In case of any deviation from the foregoing, the prosecution must positively acknowledge the same and prove (1) justifiable ground/s for non-compliance and (2) the proper preservation of the integrity and evidentiary value of the seized item/s.

WHEREFORE, the appeal is **GRANTED**. The Decision dated August 5, 2019 and Resolution dated November 7, 2019 of the Court of Appeals in CA-G.R. CR-HC No. 11472 are hereby **REVERSED** and **SET ASIDE**. Petitioner Mario Nisperos y Padilla is **ACQUITTED** of the crime charged on the ground of reasonable doubt, and is **ORDERED IMMEDIATELY RELEASED** from detention unless he is being lawfully held for another cause. Further, petitioner is **ORDERED TO PAY** the docket fee deficiency of ₱80.00.

Let a copy of this Decision be furnished to the Director General of the Bureau of Corrections for immediate implementation. The Director General of the Bureau of Corrections is directed to report to this Court within five (5) days from receipt of this decision the action he has taken. Copies shall also be furnished to the Secretary of Justice, the Police General[46] of the Philippine National Police, the Chairperson of the Dangerous Drugs Board, and the Director General of the Philippine Drug Enforcement Agency for their information.

Let entry of final judgment be issued immediately.

SO ORDERED.

RICARDO R. ROSARIO
Associate Justice

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45 REP. ACT NO. 10640 took effect fifteen (15) days after its publication in the Philippine Star and the Manila Bulletin on July 23, 2014, *i.e.*, on August 7, 2014.

46 New rank nomenclature pursuant to the IRR of REP. ACT NO. 11200.

WE CONCUR:

Please see concurring opinion

ALEXANDER G. GESMUNDO
Chief Justice

See separate concurring opinion

See Concurring Opinion

MARVIC MARIO VICTOR F. LEONEN
Senior Associate Justice

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

RAMON PAUL L. HERNANDO
Associate Justice

AMY C. LAZARO-JAVIER
Associate Justice

HENRI JEAN PAUL B. INTING
Associate Justice

RODIL V. ZALAMEDA
Associate Justice

MARIO V. LOPEZ
Associate Justice

SAMUEL H. GAERLAN
Associate Justice

JHOSEP Y. LOPEZ
Associate Justice

ON OFFICIAL LEAVE
JAPAR B. DIMAAMPAO
Associate Justice

ON OFFICIAL BUSINESS
JOSE MIDAS P. MARQUEZ
Associate Justice

ANTONIO T. KHO, JR.
Associate Justice
See concurring and dissenting opinion

MARIA FILOMENA D. SINGH
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, 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.

ALEXANDER G. GESMUNDO
Chief Justice

CERTIFIED TRUE COPY
MARIFE M. LOMIBAO-CUEVAS
Clerk of Court
Supreme Court

EN BANC

G.R. No. 250927 ***(Mario Nisperos y Padilla,*** *petitioner* ***vs. People of the Philippines,*** *respondent).*

Promulgated: November 29, 2022

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CONCURRING OPINION

GESMUNDO, *C.J.*:

Before this Court is a Petition for Review on *Certiorari* filed by Mario Nisperos *y* Padilla *(petitioner)* under Rule 45 of the Rules of Court, assailing the Decision dated June 29, 2018 and Resolution dated November 7, 2019 of the Court of Appeals *(CA)* in CA-G.R. CR-HC No. 11472. The CA affirmed the Judgment dated March 13, 2018 and Resolution dated April 23, 2018 of the Regional Trial Court *(RTC)* of Tuguegarao City, Cagayan, Branch 1 in Crim. Case No. 17489, convicting petitioner for violation of Section 5, Article II of Republic Act *(R.A.)* No. 9165, as amended by R.A. No. 10640.

The central issue in this case is the time element on the conduct of the inventory and taking of photographs of the seized items in a warrantless seizure under Sec. 21 (1) of R.A. No. 9165, as amended by R.A. No. 10640. In other words, there is a necessity to interpret the phrase "immediately after seizure and confiscation" under the said law.

I agree with the conclusion of the *ponencia* that petitioner must be acquitted because not all the insulating witnesses required under the law were present at the time of the inventory and the prosecution failed to prove the integrity and evidentiary value of the seized item. I concur with the *ponencia* that "[i]n warrantless arrests on account of buy-bust operations, the required witnesses must be present "at or near" the place of apprehension, i.e., within the vicinity, in order to comply with the statutory rule that the inventory should be conducted immediately after the seizure and confiscation."[1]

The discussion regarding when the inventory and taking of photographs should be conducted during buy-bust operations can most certainly guide the

[1] *Ponencia* in G.R. No. 250927, p. 2.

bench, the bar, state agents, and the general public on observing strict compliance with the chain of custody rule.

I likewise appreciate that the guideline set forth by the *ponencia* did not expressly harp on the issue of the place where the conduct of the inventory and taking of photographs of the seized items under Sec. 21 of R.A. No. 9165, as amended, should be undertaken as this is covered by a different case.

The second part of Sec. 21(1), or its first *proviso*, provides the location where the inventory and taking of photographs of the seized items should be done, *viz.*:

> x x x *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. xxx

In the recently promulgated case of *People v. Casa*,[2] which discussed among others, the venue of the inventory and taking of photographs of the seized items under Sec. 21 of R.A. No. 9165, as amended, it was stated that as a general rule, the inventory should be conducted at the place of seizure; only as an exception, will such inventory be conducted at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable.

It must be pointed out that the law itself recognizes that the conduct of the inventory at the nearest police station or at the nearest office of the apprehending officer/team is not absolute, unbridled, and unrestrained because of the phrase **"whichever is practicable."** Verily, a plain reading of the provision shows that this phrase is a qualifier for when police officers may conduct the inventory at the nearest police station or at the nearest office of the apprehending officer/team. It illustrates the plain meaning of the statute that only when police officers offer a "practicable" reason for the conduct of the inventory at nearest police station or at the nearest office of the apprehending officer/team shall the law allow a deviation from the provided location for the inventory. Absent such "practicable" reason, then the police officers are required to conduct the inventory and taking of photographs of the confiscated items at the place of seizure. This is pursuant to the plain meaning rule, or *verba legis*.[3]

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[2] G.R. No. 254208, August 16, 2022 [Per C.J. Gesmundo, En Banc].
[3] Id. at 13.

Indeed, the phrase **"whichever is practicable"** which was purposely adopted by Congress, cannot just be conveniently set aside, in an effort to make the duty of the police officers not difficult.

As stated in *People v. Casa*,[4] if R.A. No. 9165, as amended by R.A. No. 10640, deleted that phrase **"whichever is practicable,"** I would not have difficulty accepting the alternative proposition that police officers have uninhibited and complete discretion to conduct the inventory the nearest police station or the nearest office of the apprehending officer/team. However, existing law is as clear as daylight. The phrase **"whichever is practicable"** is retained under Sec. 21 of R.A. No. 9165, as amended. Necessarily, the Court must uphold its constitutional duty to recognize each and every word and phrase in the statute. It simply cannot conveniently turn a blind eye to a particular phrase in law, which was purposely adopted by Congress, just for the sake of making the duty of the police officers "not difficult."[5]

It is a basic canon of statutory construction that in interpreting a statute, care should be taken that every part thereof be given effect, on the theory that it was enacted as an integrated measure and not as a hodge-podge of conflicting provisions. The rule is that a construction that would render a provision inoperative should be avoided; instead, apparently inconsistent provisions should be reconciled whenever possible as parts of a coordinated and harmonious whole.[6]

Conspicuously, to justify the acquittal of petitioner in this case, the *ponencia* stated that "the inventory was done at the place of seizure and did not need to be performed at the nearest police station or the nearest office of the apprehending team, the buy-bust team should have been able to conduct the same immediately after the seizure[.]" [7] This demonstrates that the *ponencia* essentially recognizes that, as a general rule, the inventory should be conducted at the place of seizure, considering that there was no need to perform such inventory at the nearest police station or the nearest office of the apprehending team.

As expounded in *People v. Casa*,[8] the interpretation of Sec. 21 (1) of R.A. No. 9165, as amended, which set forth the rule regarding the place of conduct of the inventory, is in accordance with the intent and purpose of the

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[4] Supra.
[5] Id. at 20.
[6] *Malaria Employees and Workers Association of the Philippines, Inc. v. Romulo*, 555 Phil. 629, 639 (2007). [Per C.J. Puno, First Division].
[7] Supra note 1, at 6.
[8] Supra.

chain of custody rule. It strikes a harmonious balance between the intent of the law in protecting the accused against the planting and switching of dangerous drugs immediately after their purported seizure, and the equally significant intent to efficiently facilitate the conduct of the inventory of the seized dangerous drugs at the place of seizure unless, for practicable and safety reasons provided by the law enforcement agencies, the inventory should be conducted at the nearest police station or nearest office of the apprehending officer/team.[9]

WHEREFORE, I vote to **GRANT** the petition.

ALEXANDER G. GESMUNDO
Chief Justice

[9] Id. at 25.

EN BANC

G.R. No. 250927– MARIO NISPEROS y PADILLA., ***petitioner,*** **v. PEOPLE OF THE PHILIPPINES,** ***respondent.***

Promulgated:

November 29, 2022

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SEPARATE OPINION

LEONEN, *J.*:

I concur with Associate Justice Ricardo R. Rosario's *ponencia* that Mario Nisperos *y* Padilla (Nisperos) must be acquitted on the ground of the prosecution's failure to prove beyond reasonable doubt that he is guilty of illegal sale of drugs. However, I write separately to expound on certain points with which I differ from the *ponencia.* It is important that I articulate these matters for although they do not affect the specific outcome of this case, the principles espoused by jurisprudence as to what is sufficient compliance with the law provides clear and definite guidelines on the proper conduct of law enforcement operations.

I maintain that the requirements laid down by law, specifically the chain of custody in Republic Act No. 9165, as well as by jurisprudence, must be strictly adhered to during the conduct of buy-bust operations. These stringent requirements, including the presence of insulating witnesses at the time of arrest or seizure that is well established in jurisprudence,[1] are imposed to preserve the constitutional rights of all citizens, especially those who stand to suffer from the State's use of legitimate force.[2] The calibration of the requirements of Section 21 of Republic Act No. 9165, as amended by Republic Act No. 10640, is vital in balancing the need for effective prosecution of those involved in illegal drugs while preserving the people's enjoyment of the most basic liberties.[3]

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1 *People v. Mendoza,* 736 Phil. 749 (2014) [Per J. Bersamin, First Division]; *People v. Bintaib,* 829 Phil. 13 (2018) [Per J. Martires, Third Division]; *People v. Sood,* 832 Phil. 850 (2018) [Per J. Caguioa, Second Division]; *People v. Tampan,* G.R. No. 222648, February 13, 2019 [Per J. J. Reyes, Jr., Second Division]; *People v. Dela Torre,* G.R. No. 238519, June 26, 2019 [Per J. Peralta, Third Division]; *People v. Bahoyo,* G.R. No. 238589, June 26, 2019 [Per J. A. Reyes, Jr., Third Division]; *People v. Advincula,* G.R. No. 201576, July 22, 2019 [Per J. Carandang, First Division]; *Abilla v. People,* G.R. No. 227676, April 3, 2019 [Per J. Caguioa, Second Division]; *People v. Martin,* G.R. No. 233750, June 10, 2019 [Per J. A. Reyes, Jr., Third Division]; *People v. Angeles,* G.R. No. 224223, November 20, 2019 [Per J. Inting, Second Division]; *People v. Sta. Cruz,* G.R. No. 244256, November 25, 2019 [Per J. J. Reyes, Jr. First Division]; *Luna v. People,* G.R. No. 231902, June 30, 2021 [Per J. Caguioa, First Division]; *Pagal v. People,* G.R. No. 251894, March 2, 2022 [Per J. Leonen, Third Division].

2 *People v. Que,* 824 Phil. 882, 885 (2018) [Per. J. Leonen, Third Division]; and *People v. Sumilip,* G.R. No. 223712, September 11, 2019 [Per. J. Leonen, Special First Division].

3 Id.

Strict adherence to the chain of custody rule ensures the integrity of the allegedly seized items and thus, renders them trustworthy. Failure to observe the stringent requirements of the chain of custody rule puts reasonable doubt on the guilt of the accused, as it also means that the prosecution was not able to establish the *corpus delicti*. However, jurisprudence has recognized that in some cases, strict compliance with the rule is impracticable, which gives leeway for deviations, but only on the strictest and most exceptional grounds. In addition, the prosecution must also state and prove the twin requirements of: (a) justifiable ground for noncompliance; and (b) assurance that the integrity and evidentiary value of the seized items are properly preserved. Law enforcement agents bear the burden of declaring and demonstrating the "concrete steps" they have taken to guarantee the "integrity and evidentiary value of the items allegedly seized" as well as the "specific reasons impelling them to deviate from the law."[4]

Finally, I emphasize that our courts must exercise "heightened scrutiny, consistent with the requirement of proof beyond reasonable doubt, in evaluating cases involving min[u]scule amounts of drugs"[5] for such face the greatest risk of planting and tampering of evidence.[6] I repeat that it is about time that our law enforcers exert more effort in going after the real drug syndicates that wreak havoc in our country instead of spending valuable resources on "orchestrated or poorly built up drug-related cases"[7] that do nothing but "alienate our people, enable corrupt law enforcers, and undermine the confidence of our people—especially those who are impoverished and underprivileged—on our court's ability to do justice."[8]

I

In a September 18, 2015 Information, Nisperos was charged with violation of Section 5 of Republic Act No. 9165.[9] Upon arraignment, he entered a plea of not guilty to the offense charged. Then, trial ensued.[10]

On March 13, 2018, the Regional Trial Court found Nisperos guilty beyond reasonable doubt of the offense charged and sentenced him to suffer life imprisonment and to pay a fine of ₱500,000.00. It subsequently denied his Motion for Reconsideration.[11]

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4 *People v. Abdulah*, G.R. No. 243941, March 11, 2020 [Per J. Leonen, Third Division].
5 *People v. Holgado*, 741 Phil. 78, 100 (2014) [Per J. Leonen, Third Division].
6 Id.
7 *People v. Comoso*, G.R. No. 227497, April 10, 2019 [Per J. Leonen, Third Division] citing *People v. Lim*, 839 Phil. 598 (2018) [Per J. Peralta, *En Banc*].
8 *People v. Suating*, G.R. No. 220142, January 29, 2020 [Per J. Leonen, Third Division].
9 *Ponencia*, p. 2.
10 Id. at 3.
11 Id.

On June 29, 2018, the Court of Appeals affirmed his conviction with modification that he shall not be eligible for parole. It also denied his Motion for Reconsideration.[12]

Hence, Nisperos filed a Petition for Review on *Certiorari* before this Court. In sum, petitioner argues that the apprehending team failed to strictly follow the chain of custody rule.[13]

I concur with petitioner's acquittal. As aptly discussed in the *ponencia*, while the purported sale transpired at 11:30 a.m. of June 30, 2015, the inventory took place only at 12:00 p.m. In this case, without the presence of Department of Justice representative Ferdinand Gangan (Gangan), the inventory could not be conducted. Hence, the chain of custody rule has not been complied with.[14]

Furthermore, Gangan also testified that when he arrived, the seized items were still unmarked and were only marked subsequently.[15] Worse, the prosecution gave no reason to warrant such delay. Thus, I agree with the *ponencia* that since the first link of the chain of custody was not established, there is no chain to speak of. With the belated marking and conduct of the inventory of the seized drugs, the integrity and evidentiary value of the *corpus delicti* are seriously compromised and the acquittal of petitioner is warranted.[16]

The utter disregard in complying with the requisites provided by Section 21 of the Comprehensive Dangerous Drugs Act is apparent in this case. The failure to secure the required witnesses during seizure and inventory and to mark the seized items in the presence of third witnesses cast doubt on the integrity and identity of the alleged illicit drugs. As the "last bulwark of democracy,"[17] this Court cannot sanction violations of the chain of custody requirements.[18] The burden rests upon the prosecution to prove an accused's guilty beyond reasonable doubt.[19] Absent such proof, acquittal must ensue.

However, I maintain that the presence of the three witnesses must be secured not only during the inventory but also during the seizure of the confiscated items. This is because their presence during this crucial time would erase doubt as to the seized items' source, identity, and integrity.[20] The witnesses would be able to testify whether the items taken during the seizure

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12 Id. at 3–4.
13 Id. at 4.
14 Id. at 6.
15 Id. at 3.
16 Id. at 7.
17 J. Perfecto, Dissenting Opinion in *Ramos v. Commission on Elections*, 80 Phil. 722, 728 (1948) [Per J. Paras, Second Division].
18 *People v. Banding*, G.R. No. 233470, August 14, 2019 [Per J. Leonen, Third Division].
19 Id.
20 *People v. Tomawis*, 830 Phil. 385, 405 (2018) [Per J. Caguioa, Second Division].

by the apprehending officer are the same items presented in the court as they would have personal knowledge of what has transpired during the buy-bust operation itself.

II

The constitutional mandate that no person shall be deprived of life, liberty, or property without due process of law[21] remains solemn and inflexible.[22] This Court has emphasized that "absolute heedfulness of this constitutional injunction is most pronounced in criminal cases where the accused is in the gravest jeopardy of losing their life."[23] Hence, every court must proceed with utmost care with each case presented before it, most especially "when the possible punishment is in its severest form—death—a penalty that once carried out, is irreversible and irreparable."[24]

In a criminal prosecution, much, if not all, is at stake for the accused. Upon conviction, a person is stigmatized and deprived of liberty, and if capital punishment is imposed, life is forever lost.[25] Hence, in any just and humane society which values the good name and freedom of each individual, it is important that a person shall not be condemned for committing a crime when there is reasonable doubt of their guilt.[26] Thus, the due process clause mandates that no person shall lose their liberty, or in grave instances—their life—unless the government has overcome the burden of convincing the court of their guilt.[27]

The moral force of criminal law must not be diluted by a standard of proof that leaves people doubting whether the innocent are being condemned. Such is essential in a society that values freedom, where individuals can go about their daily affairs with confidence that their government cannot adjudge them guilty of a criminal offense without convincing the court of their guilt with moral certainty.[28]

Hence, convictions in criminal actions require proof beyond reasonable doubt.[29] Rule 133, Section 2 of the Rules of Court spells out this requisite quantum of proof:

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21 CONST., art. III, sec. 1.
22 *People v. Alcalde*, 432 Phil. 366, 381 (2002) [Per J. Davide, Jr., *En Banc*].
23 *Id.*
24 *People v. Tizon,* 375 Phil. 1096, 1102 (1999) [Per J. Vitug, *En Banc*].
25 *People v. Garcia,* 289 Phil. 819, 831 (1992) [Per J. Davide, Jr., Third Division].
26 Id. at 831–832, *citing In Re Winship*, 397 U.S. 358, 90 S. Ct. 1068, 25 L.E. 2d, excerpted from LEWIS AND PEOPLES, THE SUPREME COURT AND THE CRIMINAL PROCESS 712 (1978).
27 Id.
28 *People v. Morales*, 630 Phil. 215, 218–219 (2010) [Per J. Del Castillo, Second Division], *citing In Re Winship*, 397 U.S. 358, 90 S. Ct. 1068 (1970).
29 *People v. Que,* 824 Phil. 882, 891 (2018) [Per J. Leonen, Third Division].

> Section 2. *Proof beyond reasonable doubt.* — In a criminal case, the accused is entitled to an acquittal, unless his or her guilt is shown beyond reasonable doubt. Proof beyond reasonable doubt does not mean such a degree of proof as, excluding possibility of error, produces absolute certainty. Moral certainty only is required, or that degree of proof which produces conviction in an unprejudiced mind.

To emphasize, "[p]roof beyond reasonable doubt is ultimately a matter of conscience."[30] It does not mean proof beyond all "possible or imaginary doubt."[31] Rather, it means a certainty that convinces and satisfies both reason and conscience, after duly taking into account every circumstance favoring the defendant's innocence, that they are responsible for the offense charged, and not only did they perpetrate the act, but such act amounted to a crime.[32] Such is the immensity of the responsibility that the prosecution must bear.

It is not sufficient that the prosecution only establishes a probability, no matter how strong.[33] Rather, it is necessary for the prosecution to lay before the court the relevant facts and evidence, "to the end that the court's mind may not be tortured by doubts, that the innocent may not suffer and the guilty not escape unpunished."[34] This is the "prosecution's prime duty to the court, to the accused, and the [S]tate."[35]

The prosecution's duty arises from a constitutional mandate and finds basis both in the due process clause[36] and the presumption of innocence[37] of the accused.[38] As this Court ruled in *People v. Ganguso*:[39]

> An accused has in his favor the presumption of innocence which the Bill of Rights guarantees. Unless his guilt is shown beyond reasonable doubt, he must be acquitted. This reasonable doubt standard is demanded by the due process clause of the Constitution which protects the accused from conviction except upon proof beyond reasonable doubt of every fact necessary to constitute the crime with which he is charged. The burden of proof is on the prosecution, and unless it discharges that burden the accused

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30 *People v. Comoso*, G.R. No. 227497, April 10, 2019 [Per J. Leonen, Third Division].
31 *U.S. v. Reyes*, 3 Phil. 3, 5–6 (1903) [Per J. Johnson, *En Banc*].
32 *People v. Cui, Jr.*, 245 Phil. 196, 205–206 (1988) [Per J. Padilla, Second Division].
33 *U.S. v. Reyes*, 3 Phil. 3, 6 (1903) [Per J. Johnson, *En Banc*].
34 *People v. Esquivel*, 82 Phil. 453, 459 (1948) [Per J. Tuason, *En Banc*].
35 Id.
36 Article III, Section 1 of the Constitution provides:
SECTION 1. No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.
37 Article III, Section 14(2) of the Constitution provides:
(2) In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy, impartial, and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf. However, after arraignment, trial may proceed notwithstanding the absence of the accused provided that he has been duly notified and h is failure to appear is unjustifiable.
38 *Palencia v. People*, G.R. No. 219560, July 1, 2020 [Per J. Leonen, Third Division].
39 320 Phil. 324 (1995) [Per J. Davide, Jr., First Division].

> need not even offer evidence in his behalf, and he would be entitled to an acquittal.[40] (Citations omitted)

Thus, to secure a conviction in a criminal case, the prosecution must prove the guilt of an accused beyond reasonable doubt which requires that every fact essential to the commission of the crime be established.[41]

III

In cases involving illicit narcotics, this Court has laid down the elements of illegal sale and illegal possession:

> Material to a prosecution for illegal sale of dangerous drugs is the proof that the transaction or sale actually took place, coupled with the presentation in court of the *corpus delicti* as evidence.[42]

> In illegal possession of dangerous drugs, the elements are: (1) the accused is in possession of an item or object which is identified to be a prohibited drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the said drug.[43]

In both instances, "the illicit drugs confiscated from the accused comprise the *corpus delicti* of the charges."[44] *Corpus delicti* is defined as "the body or substance of the crime, and establishes the fact that a crime has actually been committed."[45] Its elements include proof that a certain act was committed and that a person is criminally responsible for the act.[46]

Thus, their identity and integrity must be established beyond reasonable doubt.[47] It is the prosecution's duty "to ensure that the illegal drugs offered in court are the very same items seized from the accused."[48] Proof beyond reasonable doubt in these cases demands an "unwavering exactitude that the dangerous drug presented in court as evidence against the accused is the same as that seized from him in the first place."[49]

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40 Id. at 335.

41 *People v. Pagaduan*, 641 Phil. 432, 447 (2010) [Per J. Brion, Third Division].

42 *People v. Boco*, 368 Phil. 341, 356 (1999) [Per J. Panganiban, *En Banc*]; and *People v. San Juan*, 427 Phil. 236, 242 (2002) [Per J. Buena, Second Division].

43 *People v. Khor*, 366 Phil. 762, 795 (1999) [Per J. Gonzaga-Reyes, Third Division].

44 *People v. Sagana*, 815 Phil. 356, 367 (2017) [Per J. Leonen, Second Division], *citing People v. Ismael*, 806 Phil. 21 (2017) [Per J. Del Castillo, First Division].

45 *People v. Monte*, 455 Phil. 720, 727 (2003) [Per J. Ynares-Santiago, First Division] citing *People v. Oliva*, 395 Phil. 265, 275 (2000) [Per J. Pardo, First Division].

46 Id. at 727–728, citing *People v. Boco*, 368 Phil. 341 (1999) [Per J. Panganiban, *En Banc*].

47 *People v. Castillo*, G.R. No. 238339, August 7, 2019 [Per J. Leonen, Third Division]; *Evardo v. People*, G.R. No. 234317, May 10, 2021 [Per J. Leonen, Third Division].

48 *People v. Saunar*, 816 Phil. 482, 491 (2017) [Per J. Leonen, Second Division].

49 *Catuiran v. People*, 605 Phil. 646, 655 (2009) [Per J. Tinga, Second Division] citing RONALD J. ALLEN AND RICHARD B. KUHNS, AN ANALYTICAL APPROACH TO EVIDENCE 174 (1989).

Such strict requirements is demanded due to the nature of illegal drugs. Illegal drugs are fungible things[50]—indistinct and not readily identifiable.[51] Because of this, the legislature saw it fit to establish a chain of custody rule specific to cases involving dangerous drugs.[52] It requires strict compliance with an exacting standard that entails a chain of custody of the item with sufficient completeness that would make it highly unlikely, if not impossible, for the original item to be exchanged, contaminated, or tampered with.[53]

Hence, to establish the requisite identity of the dangerous drug, the prosecution must be able to account for each link in the chain of custody from the moment the drug is seized, up to its presentation in court as evidence.[54] It is in this context that we emphasize the essence of the chain of custody requirements under Section 21, Article II of Republic Act No. 9165, as amended by Republic Act No. 10640.

IV

The law provides the procedural safeguards that must be observed in the handling of seized illegal drugs to remove all doubts concerning the identity and integrity of the *corpus delicti*.[55] Strict compliance with the prescribed procedure must be observed in every single case.[56] Section 21 of Republic Act No. 9165, as amended by Republic Act No. 10640, provides the requirements for the custody and disposition of confiscated, seized, and/or surrendered drugs and/or drug paraphernalia:

> 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 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 persons from whom such items were confiscated and/or seized, or his/her representative or counsel, with an elected

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50 *People v. O'Cochlain*, G.R. No. 229071, December 10, 2018 [Per J. Peralta, Third Division], p. 29. This refers to the pinpoint citation of the Decision uploaded in the Supreme Court website.

51 *People v. Pagaduan*, 641 Phil. 432, 444 (2010) [Per J. Brion, Third Division]. *See also People v. Garcia*, 599 Phil. 416 (2009) [Per J. Brion, Second Division].

52 J. Caguioa, Concurring Opinion in *People v. Veloo*, G.R. No. 252154, March 24, 2021 [Per J. Peralta, First Division].

53 *Mallillin v. People*, 576 Phil. 576, 589 (2008) [Per J. Tinga, Second Division].

54 *People v. Lopez*, G.R. No. 247974, July 13, 2020 [Per J. Caguioa, First Division].

55 *People v. De Guzman*, 825 Phil. 43, 54 (2018) [Per J. Del Castillo, First Division].

56 Id. at 54–55.

> 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.
>
> (2) Within twenty-four (24) hours upon confiscation/seizure of dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment, the same shall be submitted to the PDEA Forensic Laboratory for a qualitative and quantitative examination;
>
> (3) A certification of the forensic laboratory examination results, which shall be done by the forensic laboratory examiner, shall be issued immediately upon the receipt of the subject item/s: *Provided*, That when the volume of dangerous drugs, plant sources of dangerous drugs, and controlled precursors and essential chemicals does not allow the completion of testing within the time frame, a partial laboratory examination report shall be provisionally issued stating therein the quantities of dangerous drugs still to be examined by the forensic laboratory: Provided, however, That a final certification shall be issued immediately upon completion of the said examination and certification[.]

In *Mallillin v. People*,[57] this Court exhaustively explained the chain of custody rule and what is considered sufficient compliance with the rule:

> 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.[58] (Citations omitted)

This ruling has been applied in numerous cases and this Court has consistently recognized that the chain of custody must be sufficiently established in buy-bust situations to ensure the preservation of the identity and integrity of the seized dangerous drugs:[59]

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[57] 576 Phil. 576 (2008) [Per J. Tinga, Second Division].
[58] Id. at 587.
[59] *Derilo v. People*, 784 Phil. 679, 686 (2016) [Per J. Brion, Second Division].

> [F]irst, 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.[60]

To show an unbroken chain of custody, the prosecution's evidence must include testimony about every link in the chain, from the moment the dangerous drug was seized to the time it is offered in court as evidence.[61] "It is from the testimony of every witness who handled the evidence from which a reliable assurance can be derived that the evidence presented in court is one and the same as that seized from the accused."[62]

V

The first and most crucial step in proving an unbroken chain of custody in drug-related prosecutions is the marking of the seized illicit drugs and other related items, as it is "the starting point in the custodial link that succeeding handlers of [said items] will use as a reference point."[63] While marking does not explicitly form part of the chain of custody requirements under the letter of Section 21, it is indispensable in ensuring that the integrity and identity of the dangerous drugs are preserved.[64] Marking the evidence separates them from the *corpus* of all other similar evidence, therefore preventing intentional or accidental switching, planting, or contamination.[65] As a rule, the inventory and taking of photographs must also be done at the actual place of apprehension.[66]

Hence, this Court has been consistent in ruling that the failure of the police to immediately mark the seized drugs is sufficient to overturn the presumption of regularity in the performance of official duties. Such failure raises reasonable doubt on the authenticity of the *corpus delicti*.[67]

To repeat, the physical inventory and photographing of the evidence must be done immediately after seizure and confiscation in the presence of three witnesses. The first witness is the accused or the person from whom the

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60 *People v. Kamad,* 624 Phil. 289, 304 (2010) [Per J. Brion, Second Division] citing *People v. Garcia,* 599 Phil. 416 (2009) [Per J. Brion, Second Division].

61 *Derilo v. People,* 784 Phil. 679, 686 (2016) [Per J. Brion, Second Division].

62 *People v. Veedor, Jr.*, 834 Phil. 88, 99 (2018) [Per J. Del Castillo, First Division] *citing Derilo v. People,* 784 Phil. 679 (2016) [Per J. Brion, Second Division].

63 Id., *citing People v. Bartolini,* 791 Phil. 626 (2016) [Per J. Carpio, Second Division].

64 *People v. Castillo,* G.R. No. 238339, August 7, 2019 [Per J. Leonen, Third Division]

65 *People v. Veedor, Jr.,* 834 Phil. 88, 99–100 (2018) [Per J. Del Castillo, First Division].

66 *People v. Sumilip,* G.R. No. 223712, September 11, 2019 [Per J. Leonen, Special First Division].

67 *People v. Veedor, Jr.,* 834 Phil. 88, 100 (2018) [Per J. Del Castillo, First Division], *citing People v. Bartolini,* 791 Phil. 626 (2016) [Per J. Carpio, Second Division].

items were seized, or their representative. The second witness is an elective public official. Lastly, the third witness is a representative from the National Prosecution Service or the media.[68]

This Court has consistently held that the presence of insulating witnesses in the first link is vital.[69] Without the insulating presence of these persons, the possibility of switching, planting, or contamination of the evidence negates the credibility of the seized drug and other confiscated items.[70] The required witnesses must be present right during the apprehension and not only during the subsequent marking, inventory, and taking photographs.[71] Their presence must be secured during the actual seizure of the items as the statutory requirement of conducting the inventory and taking of photographs "immediately after seizure and confiscation" necessarily means that the required witnesses must also be present during the seizure or confiscation.[72]

In *People v. Estabillo*,[73] this Court emphasized that the job of an insulating witness is not to look for white powdery substances which could be dangerous drugs. Rather, the role of the insulating witness is to confirm that the items seized from the appellant are the ones appearing in the inventory and are the same items offered in evidence before the court, regardless of whether they are dangerous drugs or ordinary household items. The insulating witness does not have to guarantee that the items seized from the accused are indeed illegal drugs.[74]

In *Abilla v. People*,[75] this Court held that because the only insulating witness present arrived after the apprehension of the accused, he was unable to witness how the alleged sachets of dangerous drugs were seized. Hence, "his presence did not in any way prevent the possibility that a switching, planting[,] or contamination of the evidence had transpired."[76]

In *People v. Luna*,[77] the Court explained that the reason for this mandatory imposition is dictated by logic:

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68 Republic Act No. 10640 (2014), sec. 21(1).

69 *People v. Bintaib*, 829 Phil. 13, 24 (2018) [Per J. Martires, Third Division].

70 *People v. Sagana*, 815 Phil. 356, 372–373 (2017) [Per J. Leonen, Second Division]; *People v. Reyes*, 797 Phil. 671, 689 (2016) [Per J. Bersamin, First Division]; *People v. Mendoza*, 736 Phil. 749, 764 (2014) [Per J. Bersamin, First Division]; *People v. Sood*, 832 Phil. 850, 868 (2018) [Per J. Caguioa, Second Division]; *People v. Advincula*, G.R. No. 201576, July 22, 2019 [Per J. Carandang, First Division]; *People v. Sta. Cruz*, G.R. No. 244256, November 25, 2019 [Per J. J. Reyes, Jr. First Division]; and *People v. Que*, 824 Phil. 882, 911 (2018) [Per J. Leonen, Third Division].

71 *People v. Sumilip*, G.R. No. 223712, September 11, 2019 [Per J. Leonen, Special First Division].

72 *People v. Que*, 824 Phil. 882, 911 (2018) [Per J. Leonen, Third Division].

73 G.R. No. 252902, June 16, 2021 [Per J. Lazaro-Javier, Second Division].

74 Id.

75 G.R. No. 227676, April 3, 2019 [Per J. Caguioa, Second Division].

76 Id.

77 828 Phil. 671 (2018) [Per J. Caguioa, Second Division].

> [T]hese witnesses are presumed to be disinterested third parties insofar as the buy-bust operation is concerned. *Hence, it is at the time of arrest — or at the time of the drugs' "seizure and confiscation" — that the insulating presence of the witnesses is most needed, as it is their presence at the time of seizure and confiscation that would foreclose the pernicious practice of planting of evidence.*[78] (Emphasis supplied)

If this Court will only require witnesses to be present after the apprehension and seizure, which are the most critical parts in buy-bust operations, their presence will be rendered meaningless. The reason why this Court, in a multitude of cases,[79] declared that the witnesses must also be present at the time and place of arrest or seizure is because it is when they are needed the most. This is because the illegal drugs, the *corpus delicti* of the crime, can be easily planted in the pockets or the hands of its unknowing victims.

As early as 1921, this Court has emphasized that "scrupulous care"[80] should be exercised by the courts to ascertain the guilt of the accused charged with violating provisions of laws prohibiting illegal drugs because it is "extremely easy for [informers] to blackmail or fix the badge of guilt" against the innocent and "[o]nly the constant vigilance of the courts can guard against the danger arising from such abuses."[81] In *People v. Castillo*:[82]

> Having third-party witnesses present only during the subsequent physical inventory and photographing renders the whole requirement of their presence futile. Securing third-party witnesses provides a layer of protection to the integrity of the items seized and forecloses any opportunity for the planting of dangerous drugs. *Having their presence only at a very late stage reduces them to passive automatons, utilized merely to lend hollow legitimacy by belatedly affixing signatures on final inventory documents despite lacking authentic knowledge on the items confronting them. They are then reduced to rubberstamps, oblivious to how the dangers sought to be avoided by their presence may have already transpired.*[83] (Emphasis supplied)

If we were to strictly require the presence of these witnesses only at a very late stage, after the accused has been apprehended or after the items have

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78 Id. at 689.

79 *People v. Mendoza*, 736 Phil. 749 [Per J. Bersamin, First Division]; *People v. Bintaib*, 829 Phil. 13 (2018) [Per J. Martires, Third Division]; *People v. Sood*, 832 Phil. 850 (2018) [Per J. Caguioa, Second Division]; *People v. Dela Torre*, G.R. No. 238519, June 26, 2019 [Per J. Peralta, Third Division]; *People v. Bahoyo*, G.R. No. 238589, June 26, 2019 [Per J. A. Reyes, Jr., Third Division]; *People v. Advincula*, G.R. No. 201576, July 22, 2019 [Per J. Carandang, First Division]; *People v. Tampan*, G.R. No. 222648, February 13, 2019 [Per J. J. Reyes, Jr., Second Division]; *Abilla v. People*, G.R. No. 227676, April 3, 2019 [Per J. Caguioa, Second Division]; *People v. Martin*, G.R. No. 233750, June 10, 2019 [Per J. A. Reyes, Jr., Third Division]; *People v. Angeles*, G.R. No. 224223, November 20, 2019 [Per J. Inting, Second Division]; *People v. Sta. Cruz*, G.R. No. 244256, November 25, 2019 [Per J. J. Reyes, Jr., First Division]; *Luna v. People*, G.R. No. 231902, June 30, 2021 [Per J. Caguioa, First Division]; *Pagal v. People*, G.R. No. 251894, March 2, 2022 [Per J. Leonen, Third Division].

80 *U.S. v. Delgado*, 41 Phil. 372, 382 (1921) [Per J. Malcolm, *En Banc*].

81 Id.

82 G.R. No. 238339, August 7, 2019 [Per J. Leonen, Third Division]

83 Id.

been seized, their presence would no longer hold significant value for they would have absolutely no personal knowledge of what has transpired in the most crucial moment when their presence is most important—at the very beginning, when the *corpus delicti*'s very existence is put to the test. For what is of utmost importance in the first link in the chain of custody is not the bare conduct of inventory, nor the mere act of marking or photographing. Rather, it is the certainty that the items allegedly taken from the accused will retain their integrity as they make their way from the accused to the officer effecting the seizure.[84]

For completeness, it is best to discuss the remaining links involved in the chain of custody. The second link involves "the turn-over of the confiscated drugs to the police station, the recording of the incident, and the preparation of the necessary documents such as the request for laboratory examination of the seized drugs."[85] The second link happens when the seized drugs are transferred from the apprehending officer to the investigating officer.[86] This is because the investigating officer will be the one to conduct the proper investigation and prepare all the documents for the criminal case. Hence, they must have possession of the illegal substance to prepare the documentation.[87]

In *People v. Del Rosario*,[88] this Court held that the lack of information and documentary evidence as to how, at what point, and in what condition were the seized items handed from the apprehending officer to the investigating officer cast doubt on the seized items' source, identity, and integrity and ultimately acquitted the accused due to these lapses in the chain of custody.[89]

The third link involves the delivery of the illicit drugs by the investigating officer to the forensic chemist at the forensic laboratory.[90] The laboratory technician will testify and verify the nature of the substance.[91]

In *Valencia v. People*,[92] this Court has emphasized that the third link should detail who brought the seized *shabu* to the crime laboratory, who received it, and who exercised custody and possession after it was examined and before it was presented in court.[93] Finding that these crucial details were

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84 *People v. Luna,* 828 Phil. 671, 695 (2018) [Per J. Caguioa, Second Division].
85 *People v. Villojan,* Jr., G.R. No. 239635, July 22, 2019 [Per J. Lazaro-Javier, Second Division].
86 *People v. Dahil,* 750 Phil. 212, 231 (2015) [Per J. Mendoza, Second Division].
87 Id. at 235.
88 G.R. No. 235658, June 22, 2020 [Per J. Gesmundo, Third Division].
89 Id.
90 *People v. Nandi,* 639 Phil. 134, 145 (2010) [Per J. Mendoza, Second Division].
91 *People v. Bangcola,* G.R. No. 237802, March 18, 2019 [Per J. Gesmundo, First Division]; and *People v. Dela Rosa,* 822 Phil. 885, 907 (2017) [Per J. Gesmundo, Third Division].
92 725 Phil. 268 (2014) [Per J. Reyes, First Division].
93 Id. at 285.

nowhere to be found in the records, the Court held that there was an unbroken chain of custody and thus acquitted the accused.[94]

Lastly, the fourth link refers to the transfer of the seized drugs from the forensic chemist to the court when such evidence is presented during the criminal case.[95] This Court has held that "it is of paramount necessity that the forensic chemist testifies as to details pertinent to the handling and analysis of the dangerous drug submitted for examination[.]"[96] They must detail when and from whom the illicit drug was received, the identifying labels and objects with it, its description, and its container.[97] They must also identify the method of the analysis used to determine the chemical composition of the involved specimen.[98]

In *People v. Ubungen*,[99] this Court held that absent any testimony regarding the management, storage, and preservation of the illegal drug allegedly seized herein after its qualitative examination, the fourth link in the chain of custody of the said illegal drug could not be reasonably established.[100]

VI

Strict compliance with the chain of custody rule is essential to ensure that the seized items are the same items brought to court. In *People v. Holgado*,[101] the chain of custody requirements protect the integrity of the *corpus delicti* in four aspects:

> [F]irst, the nature of the substances or items seized; second, the quantity (*e.g.*, weight) of the substances or items seized; third, the relation of the substances or items seized to the incident allegedly causing their seizure; and fourth, the relation of the substances or items seized to the person/s alleged to have been in possession of or peddling them.[102]

Conversely, as held in *Pimentel v. People*,[103] the effect of noncompliance with the chain of custody requirements is the failure on the part of the prosecution to establish the identity and integrity of the *corpus delicti* and will lead to the acquittal of the accused for failure to prove their guilt beyond reasonable doubt.[104]

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94 Id. at 287.
95 *People v. Kamad*, 624 Phil. 289, 304 (2010) [Per J. Brion, Second Division].
96 *Largo v. People*, G.R. No. 201293, June 19, 2019 [Per J. Lazaro-Javier, Second Division].
97 Id.
98 *People v. Rivera*, G.R. No. 252886, March 15, 2021 [Per J. Perlas-Bernabe, Second Division].
99 836 Phil. 888 (2018) [Per J. Martires, Third Division].
100 Id. at 902.
101 741 Phil. 78 (2014) [Per J. Leonen, Third Division].
102 Id. at 93.
103 G.R. No. 239772, January 29, 2020 [Per J. Leonen, Third Division].
104 Id.

Although strict compliance is indeed the expected standard, the law recognizes that there are extraordinary circumstances in which such would not be possible. As long as noncompliance to the rule has justifiable grounds and the integrity and the evidentiary value of the seized items remain properly preserved, the seizures and custody over said items shall not be rendered invalid.[105]

Failure to strictly follow the mandatory requirements under the chain of custody rule must be adequately explained and must be proven as a fact in accordance with the rules of evidence.[106] This requires the officers to clearly state the grounds in their sworn affidavit, coupled with a statement enumerating the steps they took to preserve the integrity of the seized items.[107] The prosecution bears the burden of proving a valid cause for noncompliance and justifying any perceived deviations from what is required by the chain of custody rule.[108] "Otherwise, the requisites under the law would merely be fancy ornaments that may or may not be disregarded by the arresting officers at their own convenience."[109] As held in *People v. Miranda*:[110]

> The Court, however, clarified that under varied field conditions, strict compliance with the requirements of Section 21 of RA 9165 may not always be possible. In fact, the Implementing Rules and Regulations (IRR) of RA 9165 — which is now crystallized into statutory law with the passage of RA 10640 — provide that the said inventory and photography may be conducted at the nearest police station or office of the apprehending team in instances of warrantless seizure, and that non-compliance with the requirements of Section 21 of RA 9165 — under justifiable grounds — will not render void and invalid the seizure and custody over the seized items so long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending officer or team. Tersely put, the failure of the apprehending team to strictly comply with the procedure laid out in Section 21 of RA 9165 and the IRR does not *ipso facto* render the seizure and custody over the items as void and invalid, provided that the prosecution satisfactorily proves that: (a) there is justifiable ground for non-compliance; and (b) the integrity and evidentiary value of the seized items are properly preserved. In *People v. Almorfe*, the Court stressed that for the above-saving clause to apply, the prosecution must explain the reasons behind the procedural lapses, and that the integrity and value of the seized evidence had nonetheless been preserved. Also, in *People v. De Guzman*, it was emphasized that the justifiable ground for non-compliance must be proven as a fact, because the Court cannot presume what these grounds are or that they even exist.[111] (Citations omitted)

In determining whether noncompliance with the strict requirements of Section 21 is justified, this Court has taken into consideration certain

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105 Id.

106 *People v. Sipin*, 833 Phil. 67, 92 (2018) [J. Peralta, Second Division].

107 Id., *citing People v. Saragena*, 817 Phil. 117 (2017) [Per J. Leonen, Third Division].

108 *People v. Paz*, 824 Phil. 1025, 1041 (2018) [Per J. Perlas-Bernabe, Second Division]; and *People v. Mamangon*, 824 Phil. 728, 742 (2018) [Per J. Perlas-Bernabe, Second Division].

109 *Valencia v. People*, 725 Phil. 268, 286 (2014) [Per J. Reyes, First Division].

110 824 Phil. 1042 (2018) [Per J. Perlas-Bernabe, Second Division].

111 Id. at 1052–1053.

situations that do not fall within the saving clause of the amended Comprehensive Dangerous Drugs Act.

In *People v. Asaytuno,*[112] this Court held that "the mere assembling of people does not equate to danger that compromises the activities of law enforcers. It does not mean that the arrest site is no longer a viable place for completing necessary procedures."[113] This Court emphasized that since the buy-bust operation was a "prearranged activity,"[114] the law enforcement team must have adequately prepared for the situations that may occur in a public setting. The police officers are expected to exercise their functions diligently despite being in a public area for they had adequate time to make the necessary preparations. Failure to make such preparations is not an excuse for noncompliance with the strict requirements of the chain of custody rule. Furthermore, the prosecution claimed that the buy-bust team was not able to immediately do the marking at the place of the arrest because the elective official was not present at the site of the arrest. This Court held that such claim underscores their neglect and does not justify failure to comply with Section 21.[115]

In *People v. Ramos*,[116] this Court held that the police officers' inadequate preparations in buy-bust operations are not justifiable grounds for noncompliance with the chain of custody rule. The apprehending officers are given ample time to prepare and are aware of the strict guidelines of Section 21. Failure to mark the seized drugs immediately because there was no marker or because the required witnesses were absent are the officers' own fault and are not valid excuses for noncompliance with the chain of custody rule.[117]

In *Sio v. People*,[118] "the failure of police officers to comply with the basic requirements of Section 21, when operations conducted by virtue of search warrants require planning and preparation, means that noncompliance with the requirements is unjustifiable."[119]

In *People v. Comoso*,[120] this Court held that "the often minuscule amounts of dangerous drugs seized by law enforcement officers compel courts to be more circumspect in the examination of the evidence. Reasonable doubt arises in the prosecution's narrative when the links in the chain of custody cannot be properly established. There is no guarantee that the evidence had not been tampered with, substituted, or altered."[121]

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112 G.R. No. 245972, December 2, 2019 [Per J. Leonen, Third Division].
113 Id.
114 Id.
115 Id.
116 G.R. No. 225325, August 28, 2019 [Per J. Leonen, Third Division].
117 Id.
118 G.R. No. 224935, March 2, 2022 [Per J. Leonen, Third Division].
119 Id. at 9. This refers to the pinpoint citation of the Decision uploaded in the Supreme Court website.
120 G.R. No. 227497, April 10, 2019 [Per J. Leonen, Third Division].
121 Id.

In *People v. Abdulah*,[122] this Court said that flimsy and unsubstantiated claims of unsafe conditions do not meet the requisites imposed to justify noncompliance with the chain of custody rule. Shallow averments of unsafe conditions premised on the profile of a given locality's population reveals indolence, if not bigotry. This Court did not accept the police officers' justification that they were unable to comply with the stringent requirements of Section 21 due to the danger of the location wherein they were situated which they described as a notorious "Muslim area." This Court held that this is not a valid reason for noncompliance with Section 21, and only serves to reinforces outdated stereotypes and blatant prejudices.[123]

In *People v. Macud*,[124] this Court recognized the destructive effects of illicit drugs in our society but emphasized that the effort to eradicate this menace cannot trample on the constitutional rights of individuals, "particularly those at the margins of our society who are prone to abuse at the hands of the armed and uniformed men of the State."[125] This Court held that this case shows how a minuscule amount of 0.08 gram "could have cost a man his liberty for a lifetime due [to] a bungled up buy-bust operation."[126]

The above cases show that this Court, in determining whether noncompliance with the strict requirements of the chain of custody rule is justified, takes into consideration the degree of preparation of the conduct of prearranged activities such as buy-bust operations, the amount of illicit drugs seized from the accused, and the degree of involvement of the accused in the drug trade.

As to the degree of involvement of the accused in the drug trade, this Court has already recognized the death of the person who was involved in the illegal drug trade death as an extralegal killing. This Court has held that the fact that of previous arrest for selling illegal drugs is of no consequence as law enforcement agents are "not at liberty to disregard the respondent's constitutionally guaranteed rights to life, liberty[,] and security."[127] Hence, I emphasize that this Court will not tolerate law enforcement agents who conspire with the accused to conduct their own illicit trade of illegal drugs. Law enforcement operations on illegal drug trade have been recognized by this Court as prone to police abuse and buy-bust operations have been often used as a tool for extortion.[128] This Court will not sit idly when such unlawful dealings occur.

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122 G.R. No. 243941, March 11, 2020 [Per J. Leonen, Third Division].
123 Id.
124 822 Phil. 1016 (2017) [Per J. Del Castillo, First Division].
125 Id. at 1042.
126 Id.
127 *Tabian v. Gonzales*, G.R. No. 247211, August 1, 2022 [Per J. J. Lopez, Second Division], p. 19. This refers to the pinpoint citation of the Decision uploaded in the Supreme Court website.
128 *People v. Suating*, G.R. No. 220142, January 29, 2020 [Per J. Leonen, Third Division].

To repeat, strict compliance with the chain of custody rule preserves the identity and integrity of the evidence, but most importantly, safeguards the rights of the accused "whose life and liberty hang[s] in the balance."[129]

The *ponencia*, in seeking to overturn well-established jurisprudential doctrine espoused in *People v. Tomawis*[130] and *People v. Mendoza,*[131] is confident that the absence of these insulating witnesses does not prevent the court from determining the integrity and evidentiary value of the seized items.[132]

After discussing in great detail each of the requisites in establishing the chain of custody and its corresponding purposes, I maintain that pushing any of these well-established requirements to the sidelines will prevent the courts from determining if the integrity and evidentiary value of the seized items had been properly preserved. This Court has recognized that narcotic substances are not readily identifiable.[133] There is danger that the white powder taken from the accused, the *corpus delicti* of the crime, could be mistaken for illegal drugs even if it could have only been sugar or baking powder.[134] As this Court held in *People v. Que*:[135]

> Fidelity to the chain of custody requirements is necessary because, by nature, narcotics may easily be mistaken for everyday objects. Chemical analysis and detection through methods that exceed human sensory perception, such as specially trained canine units and screening devices, are often needed to ascertain the presence of dangerous drugs. The physical similarity of narcotics with everyday objects facilitates their adulteration and substitution. It also makes planting of evidence conducive.[136]

Furthermore, our data reveals that there has been a significant increase in the disposal of drugs cases since the Court's pronouncement in *People v. Lim*.[137] In 2021, 82.35% of the 260 appealed drugs cases were resolved to acquit the accused.[138] The grounds for such acquittals have been largely due to noncompliance with the chain of custody rule.[139] In 2020, 290 out of the 296 acquittals were due to such noncompliance.[140] Significantly, failure to comply with the witness requirement during seizure or time of apprehension is one of the most common procedural infractions that led to such acquittals.[141]

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129 *People v. Veedor, Jr.*, 834 Phil. 88, 102 (2018) [Per J. Del Castillo, First Division].
130 830 Phil. 385 (2018) [Per J. Caguioa, Second Division].
131 736 Phil. 749 (2014) [Per J. Bersamin, First Division].
132 *Ponencia,* p. 6.
133 *Mallillin v. People*, 576 Phil. 576, 588–589 (2008) [Per J. Tinga, Second Division].
134 Id.
135 824 Phil. 882 (2018) [Per J. Leonen, Third Division].
136 Id. at 896.
137 *Comparative Analysis of Supreme Court Caseload Statistics for Appealed Drugs Cases* (2022), pp. 2–3.
138 Id.
139 Id. at 3.
140 Id. at 4.
141 Id.

The data shows that this Court has given utmost importance to the significance of the presence of insulating witnesses during arrest or seizure and has consistently held that the absence of such part in the chain of custody is considered as sufficient ground to acquit the accused.

When the item in question is so small or easily replaceable, with physical characteristics that look similar, if not exactly, alike with substances used in everyday life, the most likely it is to be tampered with, lost, or mistaken with something else.[142] The Court must therefore not reluctantly cast its eyes away from the reality of the possibility of substitution, alteration, or contamination of these narcotic substances in buy-bust operations. The absence of the insulating witnesses during the actual arrest and seizure would create a wide gap in the chain of custody, producing doubt as to the legitimacy of the operation and the identity of the seized illegal drugs.[143]

As to the safety and strategic concerns raised by the *ponencia*, I maintain that in every buy-bust operation, police officers set about a meticulously prepared and self-conscious operation.[144] "[B]uy-bust operations, by definition, are preplanned, deliberately arranged[, and] calculated."[145] Hence, the apprehending team is expected to exercise due diligence in securing preliminaries which include the safety of the required witnesses. Law enforcement agents necessarily possess the competence and skill required to conduct successful buy-bust operations, including securing the presence of witnesses which would ultimately strengthen their case against the accused.

Again, as this Court has pronounced in *Que*, "[t]here is nothing overly complicated, demanding, or difficult in Section 21's requirements. If at all, these requirements have so repeatedly been harped on in jurisprudence, and almost just as certainly on professional and casual exchanges among police officers, that the buy-bust team must have been so familiar with them."[146] The specific requirement of the presence of insulating witnesses at the time of arrest or seizure is not complicated. It is not difficult to follow. It may be arguably burdensome to our law enforcers, but such is the price to pay when the liberty and even life of a human being are at stake.

VII

At this point, I strongly emphasize that this case involves a meager 0.7603 gram of *shabu*[147] which weighs less than half the weight of a small

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142 *People v. Que*, 824 Phil. 882, 897 (2018) [Per J. Leonen, Third Division].
143 *Pimentel v. People*, G.R. No. 239772, January 29, 2020 [Per J. Leonen, Third Division].
144 *People v. Que*, 824 Phil. 882, 912 (2018) Per J. Leonen, Third Division].
145 J. Leonen, Concurring Opinion in *People v. Lim*, G.R. No. 231989, September 4, 2018, [Per J. Peralta, *En Banc*].
146 824 Phil. 882, 912 (2018) Per J. Leonen, Third Division].
147 *Ponencia*, p. 2.

five-centavo coin (1.9 grams). This small amount, although not a basis for acquittal *per se*[148] or a badge of innocence,[149] should impel our police officers to faithfully comply with the law[150] and should compel our courts to strictly scrutinize the evidence presented by the prosecution against the exacting standards imposed by Section 21 of Republic Act No. 9165, as amended.[151] The possibility of abuse in drugs cases which involve small amounts is great as evidence could be easily planted and buy-bust operations could be conveniently initiated based on unfounded claims.[152] In *People v. Tan*,[153] this Court held that:

> "[B]y 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 or hands of unsuspecting provincial hicks, and the secrecy that inevitably shrouds all drug deals, the possibility of abuse is great." Thus, the courts have been exhorted to be extra vigilant in trying drug cases lest an innocent person is made to suffer the unusually severe penalties for drug offenses[.]"[154] (Citations omitted)

Hence, in these cases, evidence presented by the prosecution must undergo "severe testing."[155] There must be stricter compliance with the chain of custody rule and the exercise of a higher level of scrutiny[156] with utmost diligence and prudence.

Furthermore, our data reveals that majority of the cases on sale and possession of dangerous drugs from 2010 to 2021 that reached this Court typically involve *shabu* with amounts that are below one gram.[157] From 2010 to 2021, there has been a steady increase in the number disposed drugs cases appealed to this Court,[158] a significant number of which have been due to the noncompliance of the chain of custody rule.[159] These findings are consistent with this Court's pronouncements of dismay with the deluge of cases against small-time drug pushers clogging its dockets[160] and its emphasis on ensuring the integrity of seized drugs in the chain of custody when only a minuscule amount of drugs are involved.[161]

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148 *Palencia v. People*, G.R. No. 219560, July 1, 2020 [Per J. Leonen, Third Division].
149 *People v. Que*, 824 Phil. 882, 914 (2018) [Per J. Leonen, Third Division].
150 *People v. Balubal,*, 837 Phil. 496, 514 (2018) [Per J. Gesmundo, Third Division].
151 *People v. Holgado*, 741 Phil. 78, 100 (2014) [Per J. Leonen, Third Division].
152 *People v. Saragena*, 817 Phil. 117, 143 (2017) [Per J. Leonen, Third Division].
153 401 Phil. 259 (2000) [Per J. Melo, Third Division].
154 Id. at 273.
155 *People v. Saragena*, 817 Phil. 117, 129 (2017) [Per J. Leonen, Third Division].
156 *People v. Caiz*, 790 Phil. 183, 209 (2016) [Per J. Leonen, Second Division], *citing Mallillin v. People*, 576 Phil. 576, 588 (2008) [Per J. Tinga, Second Division].
157 *Comparative Analysis of Supreme Court Caseload Statistics for Appealed Drugs Cases* (2022), p. 9.
158 Id. at 2.
159 Id. at 3.
160 *People v. Lung Wai Tang*, G.R. No. 238517, November 27, 2019 [Per J. Zalameda, Third Division].
161 *People v. Jaafar*, 803 Phil. 582, 595 (2017) [Per J. Leonen, Second Division].

It is thus imperative to reiterate this Court's ruling in *Holgado*[162] that courts should carefully and conscientiously consider all the factual circumstances in drugs cases, especially those which involve minuscule amounts of dangerous drugs:

> It is lamentable that while our dockets are clogged with prosecutions under Republic Act No. 9165 involving small-time drug users and retailers, we are seriously short of prosecutions involving the proverbial "big fish." We are swamped with cases involving small fry who have been arrested for min[u]scule amounts. While they are certainly a bane to our society, small retailers are but low-lying fruits in an exceedingly vast network of drug cartels. Both law enforcers and prosecutors should realize that the more effective and efficient strategy is to focus resources more on the source and true leadership of these nefarious organizations. Otherwise, all these executive and judicial resources expended to attempt to convict an accused for 0.05 gram of shabu under doubtful custodial arrangements will hardly make a dent in the overall picture. It might in fact be distracting our law enforcers from their more challenging task: to uproot the causes of this drug menace. We stand ready to assess cases involving greater amounts of drugs and the leadership of these cartels.[163]

In *Palencia v. People*,[164] this Court has held that every effort on cases involving illicit drugs with quantities that are as little as less than a gram, "wastes law enforcement, prosecution and judicial time."[165] Instead of focusing on the small fry, our law enforcers should step up and exert valuable time, effort, and resources in capturing the big fish—drug kingpins[166] who control the source of illegal drugs which continue to plague our society. This Court is more than ready to take on cases involving drug cartels circulating drugs in massive quantities[167]—not just those which involve amounts so small as to equate to a few grains of rice.

VIII

As a final note, for each count of unauthorized possession of dangerous drugs or unauthorized sale of dangerous drugs even for the smallest amount, the corresponding penalty under the law is at least 12 years and one day of imprisonment.[168] Strict compliance with the safeguards provided by the law and established by jurisprudence must remain paramount.

If the requisites that insulate the people from wrongful arrests and unjust convictions are dispensed with and labelled as trivial matters, such

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[162] 741 Phil. 78 (2014) [Per J. Leonen, Third Division].
[163] Id. at 100.
[164] G.R. No. 219560, July 1, 2020 [Per J. Leonen, Third Division].
[165] Id.
[166] Id.
[167] *People v. Lung Wai Tang*, G.R. No. 238517, November 27, 2019 [Per J. Zalameda, Third Division].
[168] Republic Act No. 9165 (2002), sec. 5.

would open the floodgates to rampant abuse by corrupt and immoral law enforcement officers and agents who prey on the weak and the defenseless.

We must never forget that the strength of the barrier which separates the effortless act of planting illegal drugs of minuscule amount into the pockets of innocent people and the severity of the penalties in drugs cases rests in the strict compliance with the chain of custody rule. Without the strict requirements of the chain of custody rule, innocent individuals are exposed to the risk of wrongful conviction and face the gravest jeopardy of losing their liberty, or worse—their lives.

ACCORDINGLY, I vote that the Petition be **GRANTED** and the June 29, 2018 Decision and November 7, 2019 Resolution of the Court of Appeals in CA-G.R. CR-HC No. 11472 be **REVERSED** and **SET ASIDE**. Petitioner Mario Nisperos *y* Padilla must be **ACQUITTED** of the crime charged on the ground of reasonable doubt and be **ORDERED IMMEDIATELY RELEASED** from detention unless he is being lawfully held for another cause.

MARVIC M.V.F. LEONEN
Senior Associate Justice

CERTIFIED TRUE COPY
MARIFE M. LOMBAO-CUEVAS
Clerk of Court
Supreme Court

EN BANC

G.R. No. 250927 — MARIO NISPEROS *y* PADILLA, *petitioner*, ***versus*** **PEOPLE OF THE PHILIPPINES,** *respondent*.

Promulgated:

November 29, 2022

x----------x

CONCURRING OPINION

CAGUIOA, *J.*:

In acquitting the accused in this case, the *ponencia* rules as follows:

> We are not unmindful of the fact that the presence of the mandatory witnesses at the time of apprehension may pose a serious risk to their lives and to the buy-bust operation. However, since they may also be present "near" and not necessarily "at" the place of apprehension, We stress that they are not required to witness the arrest and the seizure or confiscation of the drugs or drug paraphernalia. They need only be readily available to witness the immediately ensuing inventory.
>
> Here, while the purported sale transpired at 11:30 [a.m.] of June 30, 2015, the inventory took place half an hour later. While Barangay Captain Taguinod was already present at the place of transaction, DOJ representative Gangan arrived only at 12 noon. Without his presence, the inventory could not be conducted for lack of one required witness. Given that the inventory was done at the place of seizure and did not need to be performed at the nearest police station or the nearest office of the apprehending team, the buy-bust team should have been able to conduct the same immediately after the seizure, were it not for the tardy arrival of the DOJ representative. Certainly, his late arrival is not a justifiable ground for the delay. The buy-bust team only had itself to blame for not ensuring that all required witnesses were readily available for them to be able to immediately conduct the inventory.
>
> We find, therefore, that the buy-bust team unjustifiably deviated from the chain of custody rule when only one of the mandatory witnesses was readily available at the place of transaction, thus constraining the buy-bust team to conduct the inventory only half an hour after the seizure and confiscation of the drugs.[1]

The pivotal basis for the acquittal, as the *ponencia* articulates above, is the fact that the insulating witnesses were not "readily available" so that the delay of around 30 minutes between the time of arrest and seizure to the actual conduct of the marking and inventory casts reasonable doubt on the integrity of the *corpus delicti*, and consequently, the guilt of petitioner. To

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[1] *Ponencia*, p. 6.

be sure, the *ponencia* correctly describes the late arrival of the Department of Justice (DOJ) representative as "not a justifiable ground for the delay" and castigates, again correctly, the buy-bust team by holding that it only had itself to blame for not ensuring that all required witnesses were "readily available" for them to be able to immediately conduct the inventory.

I fully concur with the acquittal and the reasons provided by the *ponencia*.

Chain of custody as a manner of authentication of real evidence

At the outset, it is important to once again stress that chain of custody is a method of ***authenticating*** object or real evidence. Authentication "is a threshold requirement — a condition precedent to admissibility."[2] Chain of custody therefore is "but a variation of the principle that real evidence must be authenticated prior to its admission into evidence."[3] "For the object not to be excluded by the Rules, the same must pass the test of authentication."[4]

"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 object evidence, being inanimate, cannot speak for itself. It cannot present itself to the court as an exhibit."[5] In *Mallillin v. People*[6] (*Mallillin*), 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.[7] (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.'"[8] Proving chain of custody is therefore a requirement

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2 Chief Justice Diosdado M. Peralta, INSIGHTS ON EVIDENCE (2020 edition), p. 870.
3 *People v. Lim*, 839 Phil. 598, 614 (2018).
4 Willard B. Riano, EVIDENCE (2013 edition), p. 186.
5 Id. at 186-187.
6 576 Phil. 576 (2008).
7 Id. at 587. Citations omitted.
8 *United States of America v. Wendell Elliot Ricco*, 52 F.3d 58, 61 (4th Cir. 1995).

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.[9]

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."[10] In the classification of object evidence, narcotics are considered "non-unique objects," as opposed to unique objects which have readily identifiable characteristics, like a firearm which has a serial number.

Because of the nature of drugs as non-unique objects, **the legislature** saw it fit to establish a chain of custody rule that is specific to dangerous drugs cases. Again, in *Mallillin*, the Court said that: "**in authenticating the same, a standard more stringent than that 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 with sufficient completeness *if only to render it improbable that the original item has either been exchanged with another or been contaminated or tampered with*.**"[11]

Thus, Section 21 of Republic Act No. (RA) 9165, as amended by RA 10640, was to provide a specific, more stringent chain of custody procedure that is absent in the seizures of other items.

By this discussion, I mean to stress that the intent to strengthen the government's anti-drug campaign — the general intent of enacting RA 9165 and RA 10640 — **is not incompatible** with having a more stringent procedure in authenticating evidence in cases involving dangerous drugs, ensuring in the process the origin and integrity of the items submitted in court.

To borrow the words of the Court *en banc* in *People v. Lim*[12] (*Lim*), which correctly encapsulate what is the lens through which Section 21 should be interpreted:

> x x x Specifically in the prosecution of illegal drugs, the well-established federal evidentiary rule in the United States is that when the evidence is not readily identifiable and is susceptible to alteration by tampering or contamination, **courts require a more stringent foundation entailing a chain of custody of the item with sufficient completeness to render it improbable that the original item has either been exchanged**

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9 See *Dela Cruz v. People*, G.R. No. 222819, July 4, 2016 (Unsigned Resolution).
10 *Mallillin v. People*, supra note 6, at 588.
11 Id. at 589. Emphasis, italics, and underscoring supplied.
12 Supra note 3.

> **with another or been contaminated or tampered with**. x x x[13] (Emphasis and underscoring supplied)

Undoubtedly, therefore, it is through this lens — ensuring the integrity of the seized item — that Section 21 must be viewed.

The chain of custody rule, as enunciated in Section 21, was violated in this case

Following the foregoing understanding of the specific chain of custody rule applicable in cases involving dangerous drugs, it is clear that the buy-bust team in this case violated Section 21, the letter of which requires that the inventory and photographing of the seized items should be done "immediately after seizure and confiscation." Thus, when the *ponencia* stresses the need for the insulating witnesses to be "readily available," that acknowledges the temporal element required by Section 21, *i.e.*, that the required inventory and photographing should be done ***immediately*** in the presence of the insulating witnesses — so that a long period of 30 minutes would be a deviation that warrants the acquittal of the accused based on reasonable doubt. Indeed, 30 minutes is a considerable period of time that allows the planting of evidence.

As held by the Court in *People v. Tomawis*[14] (*Tomawis*) and other cases reiterating it:

> Section 21 plainly requires the apprehending team to conduct a physical inventory of the seized items and the photographing of the same **immediately after seizure and confiscation**. In addition, the inventory must be done **in the presence of the accused, his counsel, or representative, a representative of the DOJ, the media, and an elected public official**, who shall be required to sign the copies of the inventory and be given a copy thereof.
>
> The phrase "immediately after seizure and confiscation" means that the physical inventory and photographing of the drugs were intended by the law to be made immediately after, or at the place of apprehension. And only if this is not practicable, the IRR allows that the inventory and photographing could be done as soon as the buy-bust team reaches the nearest police station or the nearest office of the apprehending officer/team. By the same token, however, this also means that the three required witnesses should already be physically present at the time of apprehension—a requirement that can easily be complied with by the buy-bust team considering that the buy-bust operation is, by its nature, a planned activity. Simply put, the buy-bust team has enough time and opportunity to bring with them said witnesses.[15] (Emphasis in the original)

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[13] Id. at 614-615. Citations omitted.
[14] 830 Phil. 385 (2018).
[15] Id. at 404-405.

The above-quoted discussion of *Tomawis* is animated by the very same principle enunciated by the *ponencia* — that is, that the insulating witnesses should be "readily available" to witness the inventory and photographing, and are not merely "called in" hours after the arrest and seizure to witness evidence that had already been planted.

Stated differently, the underlying *raison d'etre* of the cases of *People v. Mendoza*[16] (*Mendoza*), *Tomawis*, and the cases that reiterated them, was to impress the need for the buy-bust teams to follow the ***letter*** of Section 21 which, again, mandates an inventory and photographing before the insulating witnesses "immediately after seizure and confiscation" of the drugs.

It must be clarified that *Tomawis*, and the cases that reiterated it, never proposed nor required that the insulating witnesses should accompany the buy-bust team in ***every*** phase of the operation or in the very execution of the buy-bust as if they were part of the buy-bust team. Rather, what these cases emphasized was precisely what the *ponencia* now holds — and that is, that the insulating witnesses should be "readily available."

To recall, in *Tomawis,* the factual anchor of the ruling was the fact that the inventory was done in the barangay hall of Pinyahan, Quezon City, while there were multiple police stations nearer the place of apprehension: at Starmall, Alabang. At its core, the violation in *Tomawis* hinged on immediacy, as there was a considerable gap between the apprehension and the inventory considering the travel time between Alabang and Quezon City. Simply put, if the witnesses were made "readily available" and inventory was conducted "immediately," it would not have resulted in the acquittal of the accused in *Tomawis*. Thus, in *Tomawis*, this was articulated by its holding that the insulating witnesses should be "at or near" the place of arrest and seizure so that they can immediately go to the scene to do their job of witnessing the marking, inventory and photographing of the seized drugs. That is the same underlying impetus for the other cases when they used the language that the insulating witnesses should be present "at the time of the seizure."

In this connection, it is important to dispel any impression that *Tomawis,* and the previous cases it relied upon, engaged in "judicial legislation." In these cases, the Court merely *interpreted* Section 21, applying therefor the **doctrine of necessary implication**. Indeed,

> x x x what is implied in a statute is as much a part thereof as that which is expressed. Every statute is understood, by implication, to contain all such provisions as may be necessary to effectuate its object and purpose, or to make effective rights, powers, privileges or jurisdiction which it grants,

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[16] 736 Phil. 749 (2014).

> including all such collateral and subsidiary consequences as may be fairly and logically inferred from its terms. x x x[17]

Stated differently, the rulings in *Mendoza* and *Tomawis* can be demonstrably found within the text of Section 21 and are ***necessarily implied*** by its letter.

To elucidate, the ***letter*** of Section 21 requires the inventory and photographing of the seized items "immediately after seizure and confiscation." By definition, the word "immediately" means "*without interval of time, without delay, straightaway, or without any delay or lapse of time.*"[18] This requirement of immediacy — which has existed even before the amendment of Section 21 through RA 10640 — acts as a safeguard against possible abuses by providing a firm time element to document that the contraband seized is indeed obtained from the accused, and that the same contraband enters the chain of custody. This is recognized by the *ponencia* as well, as it acquits petitioner in this case on the ground that the inventory was not conducted "immediately," given the 30-minute gap between the apprehension and inventory.

The foregoing demonstrates that the requirement laid down in *Mendoza* and *Tomawis* is a ***necessary implication*** of the immediacy requirement. Simply put, the insulating witnesses are required to be ***at or near*** the place of apprehension — or, in the words of the *ponencia*, "readily available" — as this facilitates the compliance of law enforcement agencies with the requirement of conducting an inventory "immediately after seizure and confiscation." Not requiring the insulating witnesses to be ***at or near*** the place of arrest, or "readily available," would actually entail a certain passage of time between the arrest and seizure, on the one hand, and inventory, on the other, such that the requirement of immediacy would be violated.

And all this is precisely to breathe life to the chain of custody rule, the purpose of which is to ensure that the item in question was indeed seized from the individual, and that the same item remains uncompromised from the moment of seizure until its presentation in court. The nature of dangerous drugs — with its non-unique characteristics and how easy "planting" could be done — however, make it difficult for the courts to be sure of the integrity of the items brought before it. This is why Section 21 was enacted — to provide a specific chain of custody procedure for dangerous drugs. Section 21 and its requirements must, therefore, be construed to ensure the integrity of the seized item ***from the moment of seizure*** bearing in mind the susceptibility of the *corpus delicti* to being contaminated, or worse, planted. This highlights the importance of the first link, and this is also the reason why Section 21 requires the presence of the insulating witnesses only at the first link: this is the point in time when the

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[17] *Chua v. Civil Service Commission*, 282 Phil. 970, 986-987 (1992).
[18] *Immediately*, BLACK'S LAW DICTIONARY (Revised 4th ed. 1968), p. 884.

object evidence enters the chain of custody. The presence of the insulating witnesses complements the requirement of immediacy, in that an inventory conducted "immediately after seizure" in their presence ensures the origin, among others, of the seized item.

Accordingly, I concur with the *ponencia* when it states that there is a deviation from the chain of custody rule when, as a consequence of said witnesses not being "readily available," the inventory is not conducted "immediately after the seizure and confiscation."[19]

That the *ponencia* reads RA 9165 and RA 10640 as requiring the insulating witnesses to be "readily available" *vis-à-vis* the temporal requirement of immediacy is accurate as it is the same reading made by the Court in the cases of *Mendoza*, *Tomawis*, and the cases that reiterated them, that the mandatory witnesses are needed to be ***at or near*** the time and place of apprehension.

Nature of dangerous drugs and buy-bust operations

It must also be emphasized anew that the present discussion deals with buy-bust operations. **Buy-busts are still searches and seizures without prior resort to a court, and are therefore *presumed to be unreasonable*[20] under Section 2,[21] Article III of the 1987 Constitution.** Apart from its warrantless nature, another crucial aspect of buy-bust operations that needs to be highlighted is that these operations are planned, well-thought-out, and pre-arranged,[22] often involving prior surveillance and investigation. Thus, while the first proviso of Section 21 distinguishes between seizures pursuant to a search warrant, on the one hand, and warrantless seizures, on the other, **it may be observed that buy-busts and entrapment operations — while undeniably warrantless seizures — are more similar to seizures pursuant to a warrant, *because they are planned activities*.**[23] Considering the peculiar nature of buy-bust operations, they must, therefore, be situated on the same plane as arrests pursuant to a warrant. Indeed, as discussed, both of them involve preparation, and law enforcement agents arrive at the scene already anticipating to make an arrest.

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19 *Ponencia*, p. 6.

20 *Dela Cruz v. People*, 776 Phil. 653 (2016); see also *People v. Aruta*, 351 Phil. 868 (1998).

21 SECTION 2. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.

22 See *People v. Ortega*, G.R. No. 240224, February 23, 2022; *People v. Luminda*, G.R. No. 229661, November 20, 2019, 925 SCRA 609, 619; *People v. Salenga*, G.R. No. 239903, September 11, 2019, 919 SCRA 342, 354-355; and *People v. Silayan*, G.R. No. 229362, June 19, 2019, 905 SCRA 349, 364.

23 Id.

Most importantly, in these operations, **there would not even be any sale transaction <u>if it were not orchestrated beforehand by the police</u>**, with the help of confidential informants.

Therefore, the gross inequality in power and authority — the very same inequality which necessitates the presumption of an individual's innocence — between the elements of the state, on the one hand, and a mere individual, on the other, come into play. This is the proper viewpoint to use and understand all buy-busts and entrapment operations.

So while it is true that "buy-bust operations deserve judicial sanction if carried out with due regard for constitutional and legal safeguards,"[24] it is well to still be reminded of a reality recognized by the Court as early as 1986 in *People v. Ale*[25] (*Ale*):

> At the same time, we cannot close our eyes to the many reports of evidence being planted on unwary persons either for extorting money or exacting personal vengeance. By 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 or hands of unsuspecting provincial hicks, and the secrecy that inevitably shrouds all drug deals, the possibility of abuse is great. <u>Courts must also be extra vigilant in trying drug charges lest an innocent person is made to suffer the unusually severe penalties for drug offenses.</u>[26] (Underscoring supplied)

The statement of the Court was true then, and it remains true today.

Just last year, seven policemen assigned in Bulacan were charged with murder and arbitrary detention for the unlawful detention and eventual killing of six victims in a fabricated anti-illegal drug operation.[27] The DOJ said that the police personnel made it appear that three anti-drug operations were conducted on February 14, 15 and 18, 2020 but "in truth and in fact, no buy-bust operation was ever conducted against them."[28] The victims just happened to pass by an area where a buy-bust operation took place when they were forcibly abducted by the policemen.[29]

There is also a very recent case where agents of the Philippine Drug Enforcement Agency were declared to be guilty of indirect contempt after they were caught through a closed-circuit television (CCTV) camera to have

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24 *People v. Santos, Jr.*, 562 Phil. 458, 471 (2007).
25 229 Phil. 81 (1986).
26 Id. at 87-88.
27 N.A., *DOJ: 7 Bulacan cops charged with murder in bogus drug bust*, CNN PHILIPPINES, accessed at <https://www.cnnphilippines.com/news/2021/9/1/San-Jose-Del-Monte-Bulacan-police-drug-buy-bust-murder-DOJ.html>.
28 Id.
29 Id.

staged a buy-bust operation.[30] The CCTV footage showed that the agents arrested drug suspects in separate places, instead of conducting a single buy-bust operation unlike what they initially alleged.[31] More recently, the Court's Second Division noted in a case that there were "major lapses" in the conduct of an anti-drug operation that resulted in the extra-judicial killing of a person suspected of engaging in drug trade.[32]

In this connection, it is well to remember the reminder of the Court in *Alonzo v. Intermediate Appellate Court*:[33]

> As judges, we are not automatons. We do not and must not unfeelingly apply the law as it is worded, yielding like robots to the literal command without regard to its cause and consequence. "Courts are apt to err by sticking too closely to the words of a law," so we are warned, by Justice Holmes again, "where these words import a policy that goes beyond them." While we admittedly may not legislate, **we nevertheless have the power to interpret the law in such a way as to reflect the will of the legislature.** While we may not read into the law a purpose that is not there, **we nevertheless have the right to read out of it the reason for its enactment. In doing so, we defer not to "the letter that killeth" but to "the spirit that vivifieth," to give effect to the lawmaker's will.**[34]
> (Emphasis and underscoring supplied)

I thus agree with the *ponencia*, as the ruling here is ***vital*** in carrying out the purpose of Section 21. Verily, to not require the mandatory witnesses to be "at or near" the time and place of arrest and seizure — or to be "readily available" — would be to dilute the salutary purposes of Section 21, resulting in what the Court has been trying to prevent since the case of *Ale* in 1986, *i.e.*, that an otherwise innocent person is made to suffer the unusually severe penalties for drug offenses.[35]

Recent cases, the ones after *Tomawis*, that uphold the conviction of the accused because Section 21 was complied with show that it is possible to comply with the requirement, particularly of having the mandatory witnesses at or near the time and place of arrest and seizure or "readily available." These cases include *People v. Guarin*[36] (*Guarin*), *People v. Anicoy*[37]

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30 Carla Gomez, *Negros Oriental judge finds 5 PDEA agents guilty of indirect contempt of court for 'fake' buy-bust*, INQUIRER.NET, accessed at <https://newsinfo.inquirer.net/1400008/negros-oriental-judge-finds-5-pdea-agents-guilty-of-indirect-contempt-of-court-for-fake-buy-bust>; Lian Buan, *In Dumaguete, PDEA agents fake a drug buy-bust and face contempt of court*, RAPPLER, accessed at <https://www.rappler.com/nation/pdea-agents-fake-drug-buy-bust-face-contempt-court-dumaguete/>.

31 Id.

32 Robertzon Ramirez, *Supreme Court upholds amparo as legal remedy vs. EJK, threats*, PHILIPPINE STAR, accessed at <https://www.philstar.com/headlines/2022/08/10/2201537/supreme-court-upholds-amparo-legal-remedy-vs-ejk-threats>.

33 234 Phil. 267 (1987).

34 Id. at 273.

35 *People v. Ale*, supra note 25.

36 G.R. No. 252857, March 18, 2021, accessed at <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/67405>.

37 G.R. No. 240430, July 6, 2020, accessed at <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/66690>.

(*Anicoy*), *People v. Angeles*[38] (*Angeles*), *People v. Baradi*[39] (*Baradi*), *People v. Gutierrez*[40] (*Gutierrez*), and *People v. Maylon*[41] (*Maylon*).

In *Maylon,* the Court even quoted the testimony of a member of the buy-bust team to show that the team "had already secured the presence of an elected public official and a media representative even before [it] implemented the buy-bust operation, thereby confirming that the amended witnesses requirement under RA 10640 was duly complied with."[42]

In another case which affirmed the conviction of the accused, the Court made the following observations:

> As exemplified in this case, which is decided prior to R.A. 10640, **the apprehending officers were able to meet the requirements mandated by law in spite of them having barely 24 hours to plan the entrapment operation**. Particularly commendable is the fact that they ensured the **presence of the three insulating witnesses who witnessed the marking** of the seized prohibited drugs and other seized items, the preparation of the corresponding inventories, and the taking of the photographs. **Noteworthy also is the fact that the marking, preparation of the inventory, and taking of the photographs of the seized drugs and items took place immediately after the arrest and seizure.** Thereafter, the seized prohibited drugs were turned over by IO2 Alarde to Chemist Arcos within 24 hours, and the latter came up with her report within 24 hours after receipt of the request. Without question, therefore, all the links in the chain of custody in this case were duly established which leaves no doubt as to the integrity and evidentiary value of the seized prohibited drugs which were later on presented before the trial court.
>
> **This case is therefore an exemplar of how strict compliance with the requirements of Section 21, Article II of R.A. 9165 can easily be done, so that law transgressors will be properly penalized, on the one hand, and the rights of individuals be safeguarded against undue abuses, on the other.**[43] (Emphasis and underscoring supplied)

The foregoing cases illustrate that the "strict" interpretation of Section 21 could be easily complied with, and there is no reason to reconstrue Section 21 and "relax," so to speak, its requirements.

Final Note

In sum, the "strict interpretation" of Section 21 — that the witnesses should be "at or near" the place of apprehension or that they are "readily available" is (1) an interpretation that is necessarily implied by the

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38 G.R. No. 229099, February 27, 2019, accessed at <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64894>.
39 840 Phil. 808 (2018).
40 842 Phil. 681 (2018).
41 G.R. No. 240664, March 11, 2019, 896 SCRA 1.
42 Id. at 11.
43 *People v. Lacson*, G.R. No. 229055, July 15, 2020, 943 SCRA 195, 215-216.

immediacy requirement of Section 21, and (2) an interpretation that considers both the constitutional rights at play, as well as the inherent perils that result from the power imbalance between the State and its citizens. As the Court held in *People v. Que*:[44]

> The chain of custody requirements in the Comprehensive Dangerous Drugs Act are cast in precise, mandatory language. **They are not stringent for stringency's own sake.** Rather, they are **calibrated to preserve the even greater interest of due process and the constitutional rights** of those who stand to suffer from the State's legitimate use of force, and therefore, stand to be deprived of liberty, property, and, should capital punishment be imposed, life. This calibration balances the need for effective prosecution of those involved in illegal drugs and the preservation of the most basic liberties that typify our democratic order.[45] (Emphasis supplied)

It had been brought up, during the deliberations of this case and other cases involving dangerous drugs, that the Court's "strictness" as shown in *Tomawis* and *Lim* may have made it difficult — or even dangerous — for law enforcement to do its job. If the State, however, encounters more difficulty in flexing its muscle as a result of the Court's interpretation of the law, then it is incumbent upon our law enforcement to adapt, not the other way around. For instance, when the "Miranda rights" in custodial investigations were established through *Miranda v. Arizona*[46] (*Miranda*), the police officials bewailed that it would "handcuff their investigative abilities."[47] Despite this, law enforcement undoubtedly adapted, and one study even found that "police have successfully adapted their practices to the legal requirements of *Miranda* by using conditioning, deemphasizing, and persuasive strategies to orchestrate consent to custodial questioning in most cases. In addition, in response to *Miranda*, police have developed increasingly specialized, sophisticated, and effective interrogation techniques with which to elicit statements from suspects during interrogation."[48]

In other words, should law enforcement face difficulties, it is a signal for it to adapt and evolve — it is not a signal for the Court to change the requirements of the law. The recent cases I have cited above (*Guarin*, *Anicoy, Angeles*, *Baradi*, *Gutierrez*, and *Maylon*) point to the conclusion that the Court is not asking for the impossible. The "strict" enforcement of Section 21 — that the insulating witnesses be "at or near" the place of apprehension, or, in the *ponencia*'s words, be made "readily available" — can be complied with, especially in the context of planned activities like enforcement of warrants or buy-bust operations. In addition, the aforecited cases show that it is possible to manage the risk.

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44 824 Phil. 882 (2018).
45 Id. at 885.
46 384 US 436 (1966).
47 Richard A. Leo, *The Impact of Miranda Revisited*, THE JOURNAL OF CRIMINAL LAW AND CRIMINOLOGY, Volume 86, Issue 3 (1996), p. 622.
48 Id. at 675.

Verily, there is no reason to change the interpretation of the requirements of the law. As pointed out during the deliberations of this case, the DOJ's prosecution success/conviction rates for cases involving illegal drugs have been improving in recent years — this, even with the perceived strictness of the Court through the cases of *Tomawis* and *Lim* during the same time period. The rulings in *Tomawis* and *Lim*, therefore, have not undermined the government's fight against illegal drugs. In other words, there is nothing in the past few years that should spur a revisit of *Tomawis* and *Lim.* If there is one, it is incumbent upon the legislature to pass a new law defining exactly what it wants. Until then, the Court's interpretation of "immediately after arrest and seizure" — again an interpretation that finds basis in the ***letter*** of the law and one that considers the constitutional rights at play — should stand. Thus, the consequent presence of the insulating witnesses "at or near" the place of apprehension so that they could be "readily available" during the immediate inventory should continue.

Most importantly, it is worthy to emphasize that the requirement has always been that the mandatory witnesses be **at or near** the place of apprehension. If safety were truly a concern in a particular operation, and there is no way to place the mandatory witnesses **at** the place of arrest without putting their safety at risk, then the police operative could place the mandatory witnesses **near** the place of apprehension, thereby allowing them to be "readily available" once it has been assured that the person/s apprehended have been subdued. The mandatory witnesses could be at the police car during the operation, or at the police station/barangay hall should the place of apprehension be nearby, or at any other secure place during the operation, as long as they are "at or near" the place of apprehension so that they could be "readily available" for the immediately succeeding inventory of the items. While the Court has been "strict" with implementing Section 21, it had never been unreasonable with its requirements. To recall, the Court allows deviations from Section 21 as long as the prosecution is able to show justifiable grounds for non-compliance. In *Lim*, the Court *en banc* explained:

> We have held that the immediate physical inventory and photograph of the confiscated items at the place of arrest may be excused in instances when **the safety and security of the apprehending officers and the witnesses required by law or of the items seized are threatened** by immediate or extreme danger such as retaliatory action of those who have the resources and capability to mount a counter-assault. x x x[49] (Emphasis and underscoring supplied, citation omitted)

In the same case, the Court outlined the possible allowable reasons for non-compliance with Section 21, one of which is the safety of the required witnesses:

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[49] *People v. Lim*, supra note 3, at 620.

> 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 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.[50] (Emphasis supplied)

In sum, *Tomawis*, *Lim*, and the *ponencia* all emphasize the importance of conducting the marking, inventory, and photographing immediately, in the presence of the accused and the insulating witnesses, with reasonable leeway to accommodate the various challenges that may befall law enforcement agents. This is all towards the goal of being faithful to the requirements of Section 21, with the end in view of safeguarding the rights of citizens. With this in mind, I thus concur with the *ponencia*.

Based on these premises, I vote to **GRANT** the instant petition and **REVERSE** and **SET ASIDE** the Decision dated June 29, 2018 and Resolution dated November 7, 2019 of the Court of Appeals in CA-G.R. CR-HC No. 11472 finding petitioner Mario Nisperos *y* Padilla guilty beyond reasonable doubt of violating Section 5, Article II of Republic Act No. 9165.

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

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[50] Id. at 621-622. Citations omitted.

EN BANC

G.R. No. 250927 – MARIO NISPEROS *y* PADILLA, *Petitioner*, ***v.*** **PEOPLE OF THE PHILIPPINES**, *Respondent.*

Promulgated:

November 29, 2022

x----------x

CONCURRING AND DISSENTING OPINION

KHO, JR. *J.*:

I concur in the result.

I.

Petitioner Mario Nisperos *y* Padilla (petitioner) must be acquitted of the crime of Illegal Sale of Dangerous Drugs, as defined and penalized under Section 5 Article II of Republic Act No. (RA) 9165[1], as amended, due to an unjustified deviation from the chain of custody rule in drug cases.

As pointed out in the *ponencia*, the first link of the chain of custody was not established due to the following: (*a*) "the poseur-buyer failed to mark the seized items immediately upon confiscating it. In fact, they were only marked during the inventory itself;"[2] which inventory was done half an hour after the purported sale; and (*b*) "[n]o justifiable ground was proffered to excuse the belated marking."[3]

Thus, the acquittal of petitioner is in order, pursuant to the principle that every link in the chain of custody is crucial to the preservation of the integrity, identity, and evidentiary value of the seized illegal drug, and that failure to demonstrate compliance with even just one of these links is already sufficient to create reasonable doubt that the substance confiscated from the accused is the same substance offered in evidence.[4]

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1 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 THEREFORE, AND FOR OTHER PURPOSES," approved on June 7, 2002.

2 *Ponencia*, p. 7.

3 Id.

4 See *People v. Villalon*, G.R. No. 249412, March 15, 2021 [Per J. Perlas-Bernabe, Second Division], citing *People v. Ubungen*, 836 Phil. 888 (2018) [Per J. Martires, Third Division].

II.

Notwithstanding the foregoing, I respectfully tender my dissent on the *ponencia*'s pronouncement that "the presence of the mandatory 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 the taking of photographs of the seized and confiscated drugs 'immediately after seizure and confiscation.'"[5] Further, in so pronouncing – coupled with the statement by the *ponencia* that "[g]iven that the inventory was done at the place of seizure and did not need to be performed at the nearest police station or the nearest office of the apprehending team"[6] – the *ponencia* implicitly imposes the rule that the conduct of inventory and taking of photographs must be done at the place where the warrantless arrest and seizure was made, and that it is only when there exist justifiable reasons that the same may be done at the nearest police station or at the nearest office of the apprehending team.

I submit that requiring: (*a*) the presence of insulating witnesses to be at or near the intended place of arrest; and (*b*) in warrantless arrests, the conduct of inventory and taking of photographs of the confiscated drugs at the place of seizure, **are not what the law requires**.

Contrary to the rule espoused by the *ponencia*, the language of the law, *i.e.*, Section 21 of RA 9165, as amended by Section 1 of RA 10640,[7] is clear that the presence of the insulating witnesses is only required during the **actual conduct of inventory and taking of photographs** of the confiscated drugs and that in warrantless arrests, the inventory and taking of photographs shall be made by the apprehending officer/team **at the nearest police station or at the nearest office of the apprehending officer/team.**

Therefore, the rule should be that the presence of the insulating witnesses is only required during the conduct of inventory and taking of photographs of the confiscated drugs, which are required to be done at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable to the latter, and not at the place of seizure of the confiscated drugs.

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5 *Ponencia*, pp. 5-6, citing *People v. Tomawis*, 830 Phil. 385 (2018) [Per J. Caguioa, Second Division].

6 Id. at 6.

7 OCA Circular No. 77-2015 entitled "APPLICATION OF REPUBLIC ACT NO. 10640" dated April 23, 2015, which provides that RA 10640 "took effect on 23 July 2014." However, it is well to point out that, in *People v. Gutierrez* (842 Phil. 681 [2018]), the Court noted that RA 10640 was approved on July 15, 2014 and under Section 5 thereof, it shall "take effect fifteen (15) days after its complete publication in at least two (2) newspapers of general circulation." RA 10640 was published on July 23, 2014 in The Philippine Star (Vol. XVIIII, No 359, Philippine Star Metro section, p. 21) and Manila Bulletin (Vol. 499, No. 23, World News section, p. 6). Taking into consideration the following, the proper effectivity date of RA 10640 should be **August 7, 2014**. Hence, OCA Circular No. 77-2015's statement that RA 10640 "took effect on 23 July 2014" is clearly erroneous, and as such, and must be rectified accordingly.

I am submitting my dissent because the *majority* ruling has adverse real world consequences. Failure of the apprehending officer/team to conduct inventory and taking of photographs of the confiscated drugs at the place of seizure and requiring the insulating witnesses to "be at or near the intended place of arrest," even if these activities were done at the nearest police station or at the nearest office of the apprehending officer/team as what Section 21 of RA 9165, as amended, explicitly requires, will, as ruled by the *majority* in this case, necessarily result in the acquittal of the accused of the drug charges for failure to comply with the first link of the chain of custody rule.

In this jurisdiction, we adhere to the plain meaning rule or *verba legis* in determining the intent of the legislature. This plain meaning rule or *verba legis* derived from the maxim *index animi sermo est* (speech is the index of intention) rests on the valid presumption that the words employed by the legislature in a statute correctly express its intention or will and preclude the court from construing differently. The legislature is presumed to know the meaning of the words, to have used words advisedly, and to have expressed its intent by use of such words as are found in the statute. ***Verba legis non est recedendum,* or from the words of a statute there should be no departure.**[8]

Thus, when the language of the law clearly says that the presence of the insulating witnesses is only required during the actual conduct of inventory and taking of photographs of the confiscated drugs, which should be done at the nearest police station or at the nearest office of the apprehending officer/team, **the Court should not depart from what the law says it should be**.

III.

First Link of the Chain of Custody Rule

"Section 21 of [RA] 9165 applies whether the drugs were seized either in a buy-bust operation or pursuant to a search warrant. Chain of custody means the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction. Such record of movements and custody of the seized item shall include the identity and signature of the person who held temporary custody of the seized item, the date and time when such transfer of custody were made in the course of safekeeping and use in court as evidence, and the final disposition."[9]

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8 *Rural Bank of San Miguel, Inc. v. Monetary Board*, 545 Phil. 62 (2007) [Per J. Corona, First Division].

9 See *Tumabini v. People*, G.R. No. 224495, February 19, 2020 [Per J. Gesmundo, Third Division], citing Section 1 (b) of Dangerous Drugs Board Regulation No. 1, Series of 2002.

There are four (4) links that should be established in the chain of custody of confiscated drugs, the first of which is the **seizure and marking** thereof. The first link of the chain of custody is described in Section 1 of RA 10640 amending Section 21 of RA 9165, to wit:

> 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 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. (underscoring supplied)

As shown above, there are **two (2) distinct parts** that constitute the first link of the chain of custody following the arrest of the drug suspect, namely: (*a*) the seizure and marking of the confiscated drugs from the accused; and (*b*) the conduct of inventory and taking of photographs of the same.

I shall flesh out the intricacies of these components below.

IV.

Seizure and Marking

At the outset, it is readily apparent that the requirement of marking of the confiscated drugs is not found in Section 21 of RA 9165, as amended. It is a creation of jurisprudence. Case law recognizes marking as "the first and most crucial step in the chain of custody rule as it initiates the process of protecting innocent persons from dubious and concocted searches, and of

protecting as well the apprehending officers from harassment suits based on planting of evidence. [Marking takes place] when the apprehending officer or poseur-buyer places his or her initials and signature on the item/s seized."[10] Further, marking "serves to separate the marked evidence from the *corpus* of all other similar or related evidence from the time they are seized from the accused until they are disposed of at the end of criminal proceedings, thus preventing switching, 'planting,' or contamination of evidence."[11] As such, the Court "had consistently held that failure of the authorities to immediately mark the seized drugs would cast reasonable doubt on the authenticity of the *corpus delicti*."[12]

In *People v. Santos*,[13] the Court elucidated on the conduct of marking as follows:

> On the first link, jurisprudence dictates that "'(M)arking' is the placing by the apprehending officer of some distinguishing signs with his/her initials and signature on the items seized. It helps ensure that the dangerous drugs seized upon apprehension are the same dangerous drugs subjected to inventory and photography when these activities are undertaken at the police station or at some other practicable venue rather than at the place of arrest. Consistency with the 'chain of custody' rule requires that the 'marking' of the seized items – to truly ensure that they are the same items that enter the chain and are eventually the ones offered in evidence – should be done (1) in the presence of the apprehended violator and (2) immediately upon confiscation."[14] (underscoring supplied)

Taking into consideration the foregoing disquisitions, it is respectfully posited that the requirements for the conduct of marking of the confiscated drugs are as follows: (*a*) **as to time** – it should be done immediately after seizure and confiscation; (*b*) **as to place** – it should be done at the place of such seizure and confiscation; and (*c*) **as to the witnesses** – it should be done in the presence of the apprehended violator.

In this case, while the marking of the confiscated drugs was done at the place of seizure and confiscation and the marking was made in the presence of the apprehended violator, thereby complying with the second and third requirements cited above, it appears that the apprehending officer failed to mark the confiscated drugs immediately after the seizure and confiscation thereof. Verily, the first requirement was not observed.

Therefore, petitioner should be acquitted.

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[10] *People v. Ramirez*, 823 Phil. 1215 (2018) [Per J. Martires, Third Division].
[11] Id., citing *People v. Nuarin*, 764 Phil. 550, 558 (2015) [Per J. Brion, Second Division].
[12] *People v. Dahil*, 750 Phil. 212, 232 (2015) [Per J. Mendoza, Second Division], citing *People v. Sabdula*, 733 Phil. 85, 95 (2014) [Per J. Brion, Second Division].
[13] 823 Phil. 1162 (2018) [Per J. Martires, Third Division].
[14] Id., citing *People v. Somoza*, 714 Phil. 368, 387-388 (2013) [Per J. Leonardo-De Castro, First Division].

V.

Conduct of Inventory and Taking of Photographs

Unlike marking, the second part of the first link in the chain of custody rule – the conduct of inventory and taking of photographs of the confiscated drugs – are explicitly provided under Section 21 of RA 9165, as amended by Section 1 of RA 10640.

As stated earlier, the *ponencia* implicitly foists the rule that the conduct of inventory and taking of photographs of the confiscated drugs must be done at the place where the warrantless arrest and seizure were made, and that it is only when there exists justifiable reasons that the same may be done at the nearest police station or at the nearest office of the apprehending officer/team.

I cannot agree.

There is no dispute that the original text of Section 21 of RA 9165 did not provide for the places where the inventory and taking of photographs of the confiscated drugs should be made. This resulted in varying interpretations by the practitioners, prosecutors, and judges on where the inventory and taking of photographs should be done.

By virtue of the amendment by Section 1 of RA 10640, it resulted in **significant changes** in the original text of Section 21 of RA 9165, particularly **by specifically stating two (2) places where the apprehending officer/team should conduct inventory and taking of photographs of the confiscated drugs**. It is significant to note that **Section 1 of RA 10640 is what applies in this case** because the Information alleged that petitioner committed the crimes on June 30, 2015, after the effectivity of the said amendment on August 7, 2014.

Cited in the table below is the comparison of Section 21 of RA 9165 before and after its amendment by Section 1 of RA 10640, to wit:

Section 21 of RA 9165, in the original, effective as of August 3, 2002[15]	**Section 1 of RA 10640, amending Section 21 of RA 9165, effective as of August 7, 2014**[16]

[15] RA 9165 was published in the Manila Times and the Manila Standard on June 19, 2002. Thus, pursuant to Section 102 of RA 9165 which states that "[t]his Act shall take effect fifteen (15) days upon its publication in at least two (2) national newspapers of general circulation[,]" RA 9165 appears to have become effective on August 3, 2002.

[16] OCA Circular No. 77-2015 entitled "APPLICATION OF REPUBLIC ACT NO. 10640" dated April 23, 2015, which provides that RA 10640 "took effect on 23 July 2014." However, it is well to point out that, in *People v. Gutierrez* (842 Phil. 681 [2018]), the Court noted that RA 10640 was approved on July

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.* – x x x (1) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice, and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof;	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.* – x x x (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.

Section 21 of RA 9165 in the original reads:

> 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, and any elected public official** who shall be required to sign the copies of the inventory and be given a copy thereof. (Emphasis and underscoring supplied)

15, 2014 and under Section 5 thereof, it shall "take effect fifteen (15) days after its complete publication in at least two (2) newspapers of general circulation." RA 10640 was published on July 23, 2014 in The Philippine Star (Vol. XVIIII, No 359, Philippine Star Metro section, p. 21) and Manila Bulletin (Vol. 499, No. 23, World News section, p. 6). Taking into consideration the following, the proper effectivity date of RA 10640 should be **August 7, 2014**. Hence, OCA Circular No. 77-2015's statement that RA 10640 "took effect on 23 July 2014" is clearly erroneous, and as such, and must be rectified accordingly.

On the other hand, Section 1 of RA 10640, amending Section 21 of RA 9165, which became effective on August 7, 2014, states:

> (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. (Emphasis and underscoring supplied)

As shown above, Section 1 of RA 10640 amending Section 21 of RA 9165 contained two (2) **new** significant *provisos*, the first of which addressed the material issue on where the apprehending officer/team should conduct the inventory and taking of photographs of the confiscated drugs, **which *provisos*, as mentioned earlier, were not stated in the original text of Section 21 of RA 9165.**

The two (2) new provisos are:

a. "***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" (the "First *Proviso*"); and

b. "***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 and custody over said items" (the "Second *Proviso*" or the "Saving Clause").

Significantly, the two (2) new *provisos* cited above were adopted by our Congress from the Implementing Rules and Regulations (IRR) for RA 9165

that became effective on November 27, 2002,[17] four (4) months from the effective date of RA 9165. Pursuant to Section 94[18] of RA 9165, government agencies exercised their power of subordinate legislation[19] and crafted the IRR for RA 9165 in order to implement the broad policies laid down by RA 9165 by "filling-in" the details which the Congress may not have the opportunity or competence to provide[20] – the details on where the inventory and taking of photographs should be conducted and the Saving Clause.

Let us discuss the **First *Proviso***.

Section 21 of the IRR for RA 9165, which became effective on November 27, 2002, reads:

> 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.* – x x x
>
> (a) The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required 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;
>
> x x x x (emphasis and underscoring supplied)

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17 See <https://pdea.gov.ph/images/Laws/IRROFRA9165.pdf> (last accessed November 4, 2022)

18 Section 94 of RA 9165 reads:

> SECTION 94. *Implementing Rules and Regulations.* — The present Board in consultation with the DOH, DILG, DOJ, DepEd, DSWD, DOLE, PNP, NBI, PAGCOR and the PCSO and all other concerned government agencies shall promulgate within sixty (60) days the Implementing Rules and Regulations that shall be necessary to implement the provisions of this Act.

19 "The power of subordinate legislation allows administrative bodies to implement the broad policies laid down in a statute by 'filling in' the details. All that is required is that the regulation should be germane to the objects and purposes of the law; that the regulation be not in contradiction to but in conformity with the standards prescribed by the law." (*Sigre v. Court of Appeals*, 435 Phil. 711 [2002] [Per J. Austria-Martinez, First Division], citing *The Conference of Maritime Manning Agencies, Inc. v. Philippine Overseas Employment Admistration*, 313 Phil. 592 [1995] [Per J. Davide, Jr., First Division].)

20 See *The Conference of Maritime Manning Agencies, Inc. v. POEA*, id., citing *Eastern Shipping Lines, Inc. v. POEA*, 248 Phil. 762 (1988) [Per J. Cruz, First Division].

As shown above, the two (2) *provisos*, appearing as early as in the IRR of RA 9165, got the express approval of Congress when it lifted the same from the IRR of RA 9165 and incorporated them in Section 1 of RA 10640, amending Section 21 of RA 9165. These significant changes in the law brought about by the amendment, particularly the incorporation of the First Proviso, **is an express policy declaration by Congress** on where the conduct of inventory and taking of photographs should take place, **which we are duty-bound to honor and recognize**.

At this juncture, it is discerned that the apparent source of confusion as to where the conduct of inventory and taking of photographs of the confiscated drugs shall be done – and by implication, where the presence of the mandatory witnesses is required – is the phrase appearing in Section 21 of RA 9165 and Section 1 of RA 10640 which states that inventory and taking of photographs should be done "immediately after seizure and confiscation."

In this regard, the *ponencia* – in reiterating *People v. Tomawis*[21] by holding that "the presence of mandatory 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 arrest; so that they can be ready to witness the inventory and photographing of the seized and confiscated drugs 'immediately after seizure and confiscation'" – implicitly pronounces that inventory and the taking of photographs of the confiscated drugs should be done at the place of seizure, and that it is only when there are justifiable reasons that such activities may be performed "at the nearest police station or at the nearest office of the apprehending officer/team."

Notably, this position of the *ponencia* is in line with the Court *En Banc*'s recent ruling in *People v. Casa* (*Casa*).[22]

I respectfully dissent from this view of the *ponencia*, and in so doing, reiterate my dissent in *Casa*. As will be explained herein, my position, I most respectfully submit, is in accordance with the letter, purpose, and intent of the amendment of the law.

It is humbly posited that the phrase "immediately after seizure and confiscation" – which provides for the ***time*** when the conduct of inventory and taking of photographs should take place and, by necessary implication, where the presence of the mandatory witnesses is required – is **specifically qualified by the First *Proviso*** which contains the ***acceptable places*** where such activities may be done, *i.e.*, "at the place where the search warrant is served; or at the nearest police station or at the nearest office of the

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[21] Supra note 5.

[22] G.R. No. 254208, August 16, 2022 [Per C.J. Gesmundo, *En Banc*].

apprehending officer/team, whichever is practicable, in case of warrantless seizures."

On the other hand, **the phrase "whichever is practicable" allows the apprehending officer/team to determine, based on their professional experience and the circumstances of each case, which of the two (2) acceptable places where they will conduct the inventory and taking of photographs of the confiscated drugs.**

The purpose and function of a *proviso* is well-settled in our jurisdiction. In *Chartered Bank of India, Australia and China v. Imperial*,[23] the Court declared that "[t]he usual and primary office of a *proviso* is to limit generalities and exclude from the scope of the statute that which otherwise would be within its terms." In the same vein, in *Borromeo v. Mariano*,[24] the Court stated that "[t]he office of a *proviso* is to limit the application of the law. It is contrary to the nature of a *proviso* to enlarge the operation of the law." Similarly, in *Arenas v. City of San Carlos*,[25] the Court also stated that "[t]he primary purpose of a *proviso* is to limit the general language of a statute."

In my considered view and in accordance with settled jurisprudence, **the conduct of inventory and taking of photographs of the confiscated drugs must be done by the apprehending officer/team "immediately after seizure and confiscation" at the places limited and restricted by the First *Proviso*, depending on how the seizure was made**, *particularly*:

a. ***In cases of implementation of search warrants***, the conduct of inventory and taking of photographs should **only** be done at the place where said warrant was served.

b. ***In cases of warrantless seizures (e.g., buy-bust operations)***, such activities may be done at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable to the latter.

Considering that the conduct of inventory and taking of photographs in warrantless seizures shall be done at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable to the latter, I respectfully submit that the presence of the insulating witnesses is only required, not at the place of seizure or confiscation, but at the nearest police station or at the nearest office of the apprehending officer/team. The language of the law is clear in this aspect.

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23 48 Phil. 931 (1921) [Per J. Araullo, *En Banc*].
24 41 Phil. 322 (1921) [Per J. Malcolm, *En Banc*].
25 172 Phil. 306 (1978) [Per J. Fernandez, First Division].

At this juncture, I am aware that the phrase "whichever is practicable" may be interpreted to mean that *as a general rule*, the inventory and taking of photographs must be conducted at the place of seizure. Only when the same is not practicable does the law allow the inventory and photographing to be done as soon as the buy-bust team reaches the nearest police station or the office of the apprehending office/team – as this is the interpretation implicitly foisted by the *ponencia*, which as discussed, aligns with the ruling in *Casa*.

However, I express my disagreement to this general rule-exception dynamic as this does not find support in the language of the law. The language of the law is clear in providing for two (2) acceptable places where the inventory and taking of photographs should be done, whichever is practicable for the apprehending team – at the nearest police station or at the nearest office of the apprehending officer/team. There is **no general rule-exception written in the law and there is no legal requirement** that it shall be done at the place of seizure. I respectfully reiterate that the Court should not depart from what the law says it should be.

In this connection, I quote with approval the Reflections of Senior Associate Justice Estela M. Perlas-Bernabe (SAJ Perlas-Bernabe) in this case, which she circulated prior to her retirement. In her Reflections, she explained the proper interpretation of the phrase "whichever is practicable," to wit:

> As may be gleaned from the provision itself, the phrase "or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures" is separated by a semi-colon from the other clauses. This denotes that the qualifier phrase "whichever is practicable" is only limited to the choices of "nearest police station" or "nearest office of the apprehending officer/team", and as such, does not extend to the alternative place where the conduct of inventory or photography may be conducted, *i.e.*, place of apprehension/seizure. Moreover, nowhere in the provision does it state that the conduct of inventory and inventory of the seized items may be done in these places only if it is impracticable to do so in the place of apprehension/seizure. **Verily, the law does not consider the police station and the office of the apprehending officer/team as an exception, *i.e.*, may only be availed of if it is impracticable to conduct the inventory and photography at the place of apprehension/seizure; but rather, they are designed to be permissible places where such conduct may be done.**[26] (Emphases and underscoring supplied)

The above interpretation of the places where the inventory and taking of photographs of the confiscated drugs should be done **squares with the policy considerations behind RA 10640's adoption and codification of the aforementioned *provisos, particularly as it relates to the requirement that the mandatory witnesses must be present during the inventory and the taking of photographs.***

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[26] SAJ Perlas-Bernabe's Reflections, pp. 7-8; citations omitted.

At this point, I now dwell on the intent of Congress and its purpose for amending Section 21 of RA 9165 by Section 1 of RA 10640.

In Senator Vicente C. Sotto III's (Senator Sotto) co-sponsorship speech for Senate Bill No. (SB) 2273 (which eventually became RA 10640), he expressed that: (*a*) due to the substantial number of acquittals in drugs cases due to the varying interpretations of RA 9165 by different prosecutors and judges, there is a need to introduce "certain adjustments so we can plug the loopholes in our existing law" and "ensure [its] standard implementation;" and (*b*) the safety of apprehending officers but also the mandatory witnesses need to be ensured at all times, to wit:

> Numerous drug trafficking activities can be traced to operations of highly organized and powerful local and international syndicates. The presence of such syndicates that have the resources and the capability to mount a counter-assault to apprehending law enforcers makes the requirement of Section 21(a) impracticable for law enforcers to comply with. **It makes the place of seizure extremely unsafe for the proper inventory and photography of the seized illegal drugs.**
>
> x x x x
>
> **Section 21(a) of RA 9165 need[s] to be amended to address the foregoing situation. We did not realize this in 2002 where the safety of the law enforcers and other persons required to be present in the inventory and photography of the seized illegal drugs and the preservation of the very existence of seized illegal drugs itself are threatened by an immediate retaliatory action of drug syndicates at the place of seizure.** The place where the seized drugs may be inventoried and photographed has to include a location where the seized drugs as well as the persons who are required to be present during the inventory and photograph are safe and secure from extreme danger.
>
> It is proposed that the physical inventory and taking of photographs of seized illegal drugs be allowed to be conducted either in the place of seizure of illegal drugs or at the nearest police station or office of the apprehending law enforcers. The proposal will provide effective measures to ensure the integrity of seized illegal drugs since a safe location makes it more probable for an inventory and photograph of seized illegal drugs to be properly conducted, thereby reducing the incidents of dismissal of drug cases due to technicalities.
>
> Non-observance of the prescribed procedures should not automatically mean that the seizure or confiscation is invalid or illegal, as long as the law enforcement officers could justify the same and could prove that the integrity and the evidentiary value of the seized items are not tainted. **This is the effect of the inclusion in the proposal to amend the phrase "justifiable grounds." There are instances where there are no media people or representatives from the DOJ available and the absence of these witnesses should not automatically invalidate the drug operation conducted. Even the presence of a public local elected official**

also is sometimes impossible especially if the elected official is afraid or scared.[27] (Emphases supplied)

Further, in *People v. Battung*,[28] the Court noted the sponsorship speech of Senator Grace Poe (Senator Poe) for SB 2273. In said speech, Senator Poe recognized the **difficulty in conducting the inventory and photography in the place of apprehension/seizure due to several reasons**, such as the unavailability of the insulating witnesses and in instances where barangay officials are involved in the illegal drug transaction, *viz.*:

> In her Sponsorship Speech on Senate Bill No. 2273, which eventually became [RA] 10640, Senator Grace Poe conceded that "while Section 21 was enshrined in the Comprehensive Dangerous Drugs Act to safeguard the integrity of the evidence acquired and prevent planting of evidence, **the application of said Section resulted in the ineffectiveness of the government's campaign to stop the increasing drug addiction and also, in the conflicting decisions of the courts.**" Senator Poe stressed the necessity for the amendment of Section 21 based on the public hearing that the Senate Committee on Public Order and Dangerous Drugs had conducted, which revealed that "**compliance with the rule on witnesses during the physical inventory is difficult. For one, media representatives are not always available in all corners of the Philippines, especially in the remote areas. For another there were instances where elected *barangay* officials themselves were involved in the punishable acts apprehended and thus, it is difficult to get the most grassroot-elected public official to be a witness as required by law.**"[29] (Emphases supplied)

Making sense of the foregoing ruminations of the framers of RA 10640, SAJ Perlas-Bernabe posited:

> As may be gleaned from the foregoing speeches, the legislature has come to realize that the rigid wording of Section 21 of RA 9165 fails to recognize: (*a*) the threat on the safety of apprehending officers and the insulating witnesses should they conduct the requisite inventory and photography in the place of apprehension/seizure, especially from retaliatory actions coming from drug syndicates, family members, and associates of the drug suspect; and (*b*) the instances where it would be difficult to bring the insulating witnesses to the place of apprehension/seizure, particularly when the anti-drug operation is conducted in remote areas. ***In other words, there is clear recognition of the inherent dangers to the police and the witnesses widely attending the conduct of buy-bust operations in cases involving dangerous drugs. As such, the aim of the amendments to the law is to allow, insofar as warrantless arrests/seizures are concerned, the conduct of inventory and photography in places other than the place of such arrest/seizure, particularly, "at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable."*** x x x As I see it, this is the legislature's way of balancing the interests of: *on the one hand*,

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[27] See Senate Journal, Session No. 80, 16th Congress, 1st Regular Session, June 4, 2014, p. 349-350.
[28] 833 Phil. 959 (2018) [Per Peralta, Second Division].
[29] Id.; citations omitted.

> the citizens who need protection against possible abuses in the enforcement of drugs laws, *e.g.*, frame-up, extortion, tampering and planting of evidence; and *on the other hand*, the safety of law enforcement officers and the insulating witnesses during the conduct of warrantless seizures, the most common variant of which is a buy-bust operation.[30] (Emphasis, italics, and underscoring in the original)

VI.

Witnesses Requirement

In addition to the ***time*** and ***place*** where the conduct of inventory and taking of the photographs must be made, the law further requires that, ***as to the witnesses***, such activities be conducted in the presence of the accused or the person/s from whom the items were confiscated and/or seized, or their representative or counsel, as well as the insulating witnesses enumerated therein, depending on when the seizure of the drugs occurred.

If the seizure occurred **prior** to the amendment of RA 9165 by RA 10640, the required insulating witnesses are: (*1*) an elected public official; (*2*) a Department of Justice (DOJ) representative; ***and*** (*3*) a media representative. On the other hand, if such seizure occurred **after** the effectivity of the amendment of RA 9165 by RA 10640 on August 7, 2014, the required witnesses were reduced to: (*a*) an elected public official; **and** (*b*) a representative of the National Prosecution Service (NPS) **or** the media.

At this juncture, it bears pointing out that the previous discussion on the place where the conduct of inventory and taking of photographs should be done finds particular significance with regard to this requirement of insulating witnesses. The law, in its amended iteration under RA 10640, provides that ***the presence of the insulating witnesses is only required during the actual conduct of inventory and taking of photographs at either of the places stated in the First Proviso. As such, for the ponencia to mandate the insulating witnesses "to be at or near the intended place of arrest" is to go beyond what the law requires***.

Thus, in my considered view, there is sufficient compliance with the insulating witnesses requirement as long as they are present in the actual conduct of inventory and taking of photographs in the places stated in the law, *i.e.*: (*a*) in case of service of search warrants, where such warrant was served; or (*b*) in case of warrantless seizures, at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable to the latter.

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[30] SAJ Perlas-Bernabe's Reflections, p. 10.

Notably, it is also mandated under Section 21 of RA 9165 that those insulating witnesses required to be present during the conduct of inventory and taking of photographs are also "required to sign copies of the inventory and be given a copy thereof."

In this regard, it is worthy to reiterate that Congress, knowing fully well that the presence of the insulating witnesses during the inventory and taking of photographs of the confiscated drugs and the placing of their signatures on the inventory sheet "to ensure the establishment of the chain of custody and remove any suspicion of switching, planting, or contamination of evidence"[31] are required, it deemed it necessary to amend Section 21 of RA 9165 by Section 1 of RA 10640 to address the vacuum in the law on where to conduct the inventory and taking of photographs of the confiscated drugs and to make it clear that there are now two (2) specific and acceptable places where such activities should be conducted **for purposes of avoiding varying interpretations by prosecutors and judges on the proper application of Section 21 of RA 9165, as amended by Section 1 of RA 10640, to preserve the existence of the confiscated drugs and, importantly, to protect safety of the arresting officers and insulating witnesses.**

VII.

Accused Not Required to Sign the Inventory Sheet

While the law requires that the insulating witnesses sign the inventory sheet and be given a copy thereof, the same does not hold true insofar as the accused is concerned.

In a catena of cases, it was held that the signature of an accused in an inventory sheet **is inadmissible in evidence** if it was obtained without the assistance of counsel, as what usually happens during warrantless seizures, *e.g.*, buy-bust operations. This is because the accused's act of signing the inventory sheet without assistance of a counsel is correctly viewed as a declaration against his interest and a tacit admission of the crime charged – hence, is tantamount to an **uncounseled extrajudicial confession** which is prohibited by no less than the Constitution.[32]

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[31] *Saban v. People*, G.R. No. 253812, June 28, 2021 [Per J. Perlas-Bernabe, Second Division]; citations omitted.

[32] See *People v. Dizon*, G.R. No. 223562, September 4, 2019 [Per J. Lazaro-Javier, Second Division]; *People v. Endaya*, 739 Phil. 611 (2014) [Per J. Perez, Second Division]; *People v. Mariano*, 698 Phil. 772 (2012) [Per J. Perez, Second Division]; *People v. Macabalang*, 538 Phil. 136 (2006) [Per J. Tinga, Third Division]; *People v. Del Castillo*, 482 Phil. 828 (2004) [Per J. Austria-Martinez, Second Division]; *Gutang v. People*, 390 Phil. 805 (2000) [Per J. De Leon, Jr., Second Division]; *People v. Lacbanes*, 336 Phil. 933 (1997) [Per J. Romero, Second Division]; *People v. Castro*, G.R. No. 106583, June 19, 1997 [Per J. Romero, Second Division]; *People v. Morico*, 316 Phil. 270, 277 (1995) [Per J. Quiason, First Division]; *People v. Bandin*, 297 Phil. 331 (1993) [Per J. Grino-Aquino, First Division]; *People v.*

In *People v. Dizon*,[33] the Court reiterated:

> The Inventory Receipt signed by appellant is thus not only inadmissible for being violative of appellant's custodial right to remain silent; it is also an *indicium* of the irregularity in the manner by which the raiding team conducted the search of appellant's residence.
>
> Assuming *arguendo* that appellant did waive her right to counsel, such waiver must be voluntary, knowing and intelligent. To insure that a waiver is voluntary and intelligent, the Constitution, requires that for the right to counsel to be waived, the waiver must be in writing and in the presence of the counsel of the accused. There is no such written waiver in this case, much less was any waiver made in the presence of the counsel since there was no counsel at the time appellant signed the receipt. Clearly, appellant affixed her signature in the inventory receipt without the assistance of counsel which is a violation of her right under the Constitution.[34]

Further, the language of the law is clear that the accused is **not required** to sign the inventory sheet. Section 21 (1) of RA 9165, as amended by Section 1 of RA 10640, reads:

> (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.** x x x. (emphasis and underscoring supplied)

As shown above, the first part of the sentence referring to the "accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel" **is separated** from the second part of the sentence enumerating the insulating witnesses with the word ***"with"*** as regards on who are required to sign the "copies of the inventory and be given a copy thereof." Thus, those required to sign the inventory sheet refers only to the second part of the sentence pertaining to the insulating witnesses – an elected public official and a representative of the National Prosecution Service or the media – excluding the persons mentioned in the first part. Thus, the persons mentioned in the first part of the sentence – the accused or the person/s from whom such items were confiscated and/or seized, or his/her

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Mirantes, 284-A Phil. 630 (1992) [Per J. Regalado, Second Division]; *People v. Mauyao*, 284 Phil. 9 (1992) [Per J. Melencio-Herrera, Second Division]; *People v. De Las Marinas*, 273 Phil. 754 (1991) [Per J. Paras, Second Division]; *People v. De Guzman*, 272 Phil. 432 (1991) [Per J. Cruz, First Division].

33 See G.R. No. 223562, September 4, 2019 [Per J. Lazaro-Javier, Second Division].

34 Id., citing *People v. Del Castillo*, 482 Phil. 828, 851 (2004) [Per J. Austria-Martinez, Second Division].

representative or counsel – are only required to be present during the physical inventory and taking of photographs and would not be required to sign the inventory sheet.

VIII.

We now discuss the **Second *Proviso*.**

The Second *Proviso* in Section 21 of RA 9165 as amended by Section 1 of RA 10640, states:

> "*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 and custody over said items."

In *People v. Luna*,[35] the Court provided for two (2) requisites before the prosecution can invoke the Second *Proviso* in order not to render void and invalid the seizure and custody of the confiscated drugs, to wit:

1. The existence of "justifiable grounds" allowing departure from the rule on strict interpretation; and

2. The integrity and the evidentiary value of the seized items are properly preserved by the apprehending team.

Under the first requisite, before the prosecution can invoke the Saving Clause in order to allow departure from the strict interpretation of the chain of custody rule in illegal drugs cases, the apprehending officer/team should recognize the deviations or lapses made in the chain of custody and that they are able to justify the same before the trial court.

In this connection, I most respectfully submit that the trial court should consider the justifications offered by the apprehending officer/team and evaluate them **in the light of the actual circumstances attendant from the time of seizure of the drugs up to the presentation of the same in court as evidence**.

One of the circumstances that the trial court should consider whether the chain of custody rule should be strictly construed against the prosecution is the **weight and/or amount of the illegal drugs seized** from the accused.

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[35] 828 Phil. 671 (2018) [Per J. Caguioa, Second Division].

As early as in *Mallillin v. People* (*Mallillin*),[36] which involved "two (2) plastic sachets of methamphetamine hydrochloride [or] '*shabu*' with an aggregate weight of 0.0743 gram, and four empty sachets containing '*shabu*' residue x x x," the Court explained the rationale why strict compliance of the chain of custody rule is being required in relation to the weight and/or amount of the illegal drug seized, to wit:

> Prosecutions for illegal possession of prohibited drugs necessitates that the elemental act of possession of a prohibited substance be established with moral certainty, together with the fact that the same is not authorized by law. The dangerous drug itself constitutes the very *corpus delicti* of the offense and the fact of its existence is vital to a judgment of conviction. Essential therefore in these cases is that the identity of the prohibited drug be established beyond doubt. Be that as it may, the mere fact of unauthorized possession will not suffice to create in a reasonable mind the moral certainty required to sustain a finding of guilt. More than just the fact of possession, the fact that the substance illegally possessed in the first place is the same substance offered in court as exhibit must also be established with the same unwavering exactitude as that requisite to make a finding of guilt. The chain of custody requirement performs this function in that it ensures that unnecessary doubts concerning the identity of the evidence are removed.
>
> As a method of authenticating evidence, the chain of custody rule requires that the admission of an exhibit be preceded by evidence sufficient to support a finding that the matter in question is what the proponent claims it to be. It would include testimony about every link in the chain, from the moment the item was picked up to the time it is offered into evidence, in such a way that every person who touched the exhibit would describe how and from whom it was received, where it was and what happened to it while in the witness' possession, the condition in which it was received and the condition in which it was delivered to the next link in the chain. These witnesses would then describe the precautions taken to ensure that there had been no change in the condition of the item and no opportunity for someone not in the chain to have possession of the same.
>
> While testimony about a perfect chain is not always the standard because it is almost always impossible to obtain, an unbroken chain of custody becomes indispensable and essential when the item of real evidence is not distinctive and is not readily identifiable, or when its condition at the time of testing or trial is critical, or when a witness has failed to observe its uniqueness. **The same standard likewise obtains in case the evidence is susceptible to alteration, tampering, contamination and even substitution and exchange. In other words, the exhibit's level of susceptibility to fungibility, alteration or tampering—without regard to whether the same is advertent or otherwise not—dictates the level of strictness in the application of the chain of custody rule**.
>
> Indeed, **the likelihood of tampering, loss or mistake with respect to an exhibit is greatest when the exhibit is small and is one that has physical characteristics fungible in nature and similar in form to substances familiar to people in their daily lives**. *Graham vs. State* positively acknowledged this danger. In that case where a substance later analyzed as heroin—was handled by two police officers prior to

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[36] 576 Phil. 576 (2008) [Per J. Tinga, Second Division].

> examination who however did not testify in court on the condition and whereabouts of the exhibit at the time it was in their possession—was excluded from the prosecution evidence, the court pointing out that the white powder seized could have been indeed heroin or it could have been sugar or baking powder. It ruled that unless the state can show by records or testimony, the continuous whereabouts of the exhibit at least between the time it came into the possession of police officers until it was tested in the laboratory to determine its composition, testimony of the state as to the laboratory's findings is inadmissible.
>
> **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. The Court cannot reluctantly close its eyes to the likelihood, or at least the possibility, that at any of the links in the chain of custody over the same there could have been tampering, alteration or substitution of substances from other cases—by accident or otherwise—in which similar evidence was seized or in which similar evidence was submitted for laboratory testing. Hence, in authenticating the same, a standard more stringent than that 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 with sufficient completeness if only to render it improbable that the original item has either been exchanged with another or been contaminated or tampered with.**[37] (emphases and underscoring supplied)

Pursuant to *Mallillin*'s instructions, the Court has consistently ruled in a catena of cases[38] that trial courts should exercise strict or heightened scrutiny when **miniscule amounts** of illegal drugs are presented into evidence, which I fully agree with. This is because in instances when miniscule amounts of illegal drugs are involved, the probability of tampering, alteration, substitution, exchange or switching of the illegal drugs **is at its highest – the very evil sought to be prevented by the chain of custody rule**. As explained by the Court in *People v. Olarte*,[39] "[n]arcotic substances, for example, are relatively easy to source because they are readily available in small quantities thereby allowing the buyer to obtain them at lower cost or minimal effort. It makes these substances highly susceptible to being used by corrupt law enforcers to plant evidence on the person of a hapless and innocent victim for the purpose of extortion. Such is the reason why narcotic substances should undergo the tedious process of being authenticated in accordance with the chain of custody rule."[40] This provides the rationale of the chain of custody rule.

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37 Id.

38 See *People v. Ortega*, G.R. No. 240224, February 23, 2022 [Per J. Hernando, Second Division]; *People v. Pagaspas*, G.R. No. 252029, November 15, 2021 [Per J. Leonen, Third Division]; *People v. Veloo*, G.R. No. 252154, March 24, 2021 [Per C.J. Peralta, First Division]; *Palencia v. People*, G.R. No. 219560, July 1, 2020 [Per J. Leonen, Third Division]; *Pimentel v. People*, G.R. No. 239772, January 29, 2020 [Per J. Leonen, Third Division]; *People v. Asaytuno, Jr.*, G.R. No. 245972, December 2, 2019 [Per J. Leonen, Third Division]; *People v. Alon-Alon*, G.R. No. 237803, November 27, 2019 [Per J. Zalameda, Third Division]; *People v. Zapanta*, G.R. No. 230227, November 6, 2019 [Per J. Zalameda, Third Division]; *People v. Que*, 824 Phil. 882 (2018) [Per J. Leonen, Third Division]; *People v. Holgado*, 741 Phil. 78 (2014) [Per J. Leonen, Third Division].

39 G.R. No. 233209, March 11, 2019 [Per J. Gesmundo, First Division].

40 Id.

On the other hand, if the illegal drugs offered as evidence involve **large amounts of illegal drugs**, I respectfully submit that the trial court should judiciously determine, based on the evidence of the prosecution and the circumstances of each case, whether there is a high probability of tampering, alteration, substitution, exchange or switching of the same.[41]

In the event the trial court is fully satisfied that the probability of tampering, alteration, substitution, exchange or switching of the large amount of illegal drugs offered in evidence is highly unlikely, which is a question of fact, I respectfully submit that strict compliance of the four (4) links in the chain of custody rule should be dispense with, as the rationale for its application disappears.

In this instance, the justifiable ground referred to in the first requisite of the Saving Clause will now consist of the large amount of illegal drugs itself, considering that, as proven by the prosecution to the full satisfaction of the trial court, the same could not have been tampered, altered, substituted, exchanged or switched. The continued application of strict compliance of the four (4) links in the chain of custody rule when large amounts of illegal drugs are involved goes against the intent and purpose of RA 9165, as amended.

Notwithstanding my submission that the required strict observance of the chain of custody rule should be dispensed with if the trial court is satisfied that the probability of tampering, alteration, substitution, exchange or switching of the large amount of illegal drugs offered in evidence is highly unlikely, I submit that the second requisite of the Saving Clause – that the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team – **must nevertheless still be proven and established by the prosecution beyond reasonable doubt as proof of *corpus delicti*** by credible evidence other than through the strict application of the chain of custody rule to justify the conviction of the accused and the severe penalties to be impose upon the accused under RA 9165, as amended.

IX.

In light of the foregoing discussions, I respectfully opine that the guidelines stated in the *ponencia* insofar as the compliance of the first link of the chain of custody is concerned,[42] be modified as follows:

1. The **marking of the confiscated drugs seized** from the accused must be done:

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41 See *People v. Magayon*, G.R. No. 238873, September 16, 2020 [Per J. Lazaro-Javier, First Division].
42 See *ponencia*, pp. 7-8.

a. **When:** Immediately after the confiscation of the illegal drugs;

b. **Where:** At the place of confiscation; and

c. **With whom:** In the presence of the apprehended offender;

2. The **conduct of inventory and taking of photographs of the confiscated drugs** (if after the effectivity of RA 10640 on August 7, 2014,[43] to include controlled precursors and essential chemicals, instruments/paraphernalia and/or laboratory equipment) seized from the accused must be done:

a. **When:** Immediately after seizure and confiscation;

b. **Where:** In cases of implementation of search warrants – at the place where the search warrant was served.

Where: In cases of warrantless seizures, such as buy-busts – at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable to them.

c. **With whom:** 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;

i. The accused is not required to sign the inventory sheet. In the event the accused signed the inventory sheet without the presence and assistance of counsel, his/her signature shall be deemed inadmissible.

ii. However, the absence or inadmissibility of the accused's signature, by and of itself, shall not preclude a judgment of conviction against him/her should there are other acceptable evidence showing that he/she was indeed

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[43] OCA Circular No. 77-2015 entitled "APPLICATION OF REPUBLIC ACT NO. 10640" dated April 23, 2015, which provides that RA 10640 "took effect on 23 July 2014." However, it is well to point out that, in *People v. Gutierrez* (842 Phil. 681 [2018]), the Court noted that RA 10640 was approved on July 15, 2014 and under Section 5 thereof, it shall "take effect fifteen (15) days after its complete publication in at least two (2) newspapers of general circulation." RA 10640 was published on July 23, 2014 in The Philippine Star (Vol. XVIIII, No 359, Philippine Star Metro section, p. 21) and Manila Bulletin (Vol. 499, No. 23, World News section, p. 6). Taking into consideration the following, the proper effectivity date of RA 10640 should be **August 7, 2014**. Hence, OCA Circular No. 77-2015's statement that RA 10640 "took effect on 23 July 2014" is clearly erroneous, and as such, and must be rectified accordingly.

present during the conduct of the inventory and taking of photographs.

d. **With whom:** In the presence of the insulating witnesses who shall be required to sign the inventory sheet and be given a copy thereof, as follows:

i. If the seizure occurred during the effectivity of RA 9165, or from August 3, 2002[44] until August 6, 2014, the presence of three (3) witnesses, namely, an elected public official; a Department of Justice (DOJ) representative; and a media representative;

ii. If the seizure occurred after the enactment of RA 10640 which amended RA 9165, or from August 7, 2014 onwards, the presence of two (2) witnesses, namely, an elected public official; and a National Prosecution Service (NPS) representative *or* a media representative.

iii. If the insulating witnesses refused to sign the inventory receipt, then the apprehending officers should indicate "refused to sign" or simply "RTS" on top of their respective names.

3. **The Saving Clause – in case of any lapse or deviation from the chain of custody rule**:

a. The prosecution must acknowledge the lapse or deviation and present a justification therefor. If the deviation is justified and the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, the justified deviation shall not render void and invalid such seizures and custody over said items.

b. In cases involving large amount or volume of illegal drugs, the trial court should judiciously determine, based on the evidence of the prosecution, whether there is a high probability of tampering, alteration, substitution, exchange or switching of the same. If the trial court determines that the probability of tampering, alteration, substitution, exchange or switching of the drugs offered in evidence is highly unlikely, which is a

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[44] RA 9165 was published in the Manila Times and the Manila Standard on June 19, 2022. Thus, pursuant to Section 102 of RA 9165 which states that "[t]his Act shall take effect fifteen (15) days upon its publication in at least two (2) national newspapers of general circulation[,]" RA 9165 appears to have become effective on August 3, 2002.

> question of fact, the required strict compliance of the four (4) links in the chain of custody rule should be dispense with. However, the second requisite of the Saving Clause – that the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team – must still be established by the prosecution as proof of *corpus delicti* by credible evidence other than through the strict application of the chain of custody rule.

Despite the foregoing dissent, I fully concur in the *ponencia*'s ultimate disposition to acquit petitioner due to the unjustified deviation from the first link of the chain of custody rule, as discussed in the early part of this Opinion,[45] especially considering that this case involves a minuscule amount of illegal drugs seized from petitioner, *i.e.*, 0.7603 gram,[46] thus requiring a strict application of the chain of custody rule. Verily, this is enough to constrain the Court to conclude that the integrity and evidentiary value of the drugs purportedly seized from accused-appellant has been compromised, thereby warranting his acquittal from the crime charged.

ACCORDINGLY, I vote to **ACQUIT** petitioner of the crime charged.

ANTONIO T. KHO, JR.
Associate Justice

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45 See pp. 1-2 of this Opinion.
46 See *ponencia*, p. 2.