

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MA. DEL PILAR ROSARIO C. CASA A.K.A. “MARFY CALUMPANG,” “MADAM,” AND “MAH-MAH,” ACCUSED-APPELLANT.

G.R. No. 254208. August 16, 2022

Ponente: GESMUNDO, C.J.

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GESMUNDO, C.J.:

This is an appeal from the November 29, 2018 Decision[1] of the Court of Appeals, Cebu City (CA) in CA-G.R. CR-HC No. 02574. The CA affirmed the March 28, 2017 Joint Judgment[2] of the Regional Trial Court of Dumaguete City, Negros Oriental, Branch 30 (RTC) in Crim. Case Nos. 2015--23066 and 2015-23067, finding Ma. Del Pilar Rosario C. Casa a.k.a. "Marfy Calumpang," "Madam," and "Mah-mah" (accused-appellant) guilty beyond reasonable doubt of violation of Sections 5 and 11, Article II of Republic Act (R.A.) No. 9165, otherwise known as the Dangerous Drugs Act of 2002, as amended by R.A. No. 10640.[3]

Antecedents

Accused-appellant was charged with violation of Sees. 5 and 11, Art. II of R.A. No. 9165, as amended, in two separate amended informations which read:

[Criminal Case No. 2015-23066]

That on or about the 21[st] day of July 2015, in the City of Dumaguete, Philippines, and within the jurisdiction of this Honorable Court, the said accused not being then authorized by law, did, then and there willfully, unlawfully and criminally sell and/or deliver to a poseur-buyer one (1) heat-sealed transparent plastic sachet containing 0.13 gram of Methamphetamine Hydrochloride, commonly called "shabu", a dangerous drug.

That the accused has been found positive for the use of Methamphetamine [Hydrochloride], a dangerous drug, as reflected in Chemistry Report No. DT-205-15.

CONTRARY TO LAW.[4]

[Criminal Case No. 2015-23067]

That on or about the 21[st] day of July 2015, in the City of Dumaguete, Philippines, and within the jurisdiction of this Honorable Court, the said accused, not being then authorized by law, did, then and there willfully, unlawfully and criminally keep and possess eleven (11) heat-sealed transparent plastic sachets containing an approximate aggregate weight of 10.99 grams of Methamphetamine Hydrochloride, commonly called "shabu", a dangerous drug.

That the accused has been found positive for the use of Methamphetamine [Hydrochloride], a dangerous drug, as reflected in Chemistry Report No. DT-205-15.

CONTRARY TO LAW.[5]

During arraignment on July 31, 2015, accused-appellant pleaded not guilty to the crime charged.[6] Thereafter, trial on the merits ensued.

Version of the Prosecution

Police Officer I Darelle Jed Delbo[7] (PO1 Delbo) testified that sometime in the last week of June 2015, the Special Operations Group (SOG) of the Negros Oriental Police Provincial Office received information from a confidential informant (CI) that a certain "Mah-mah" a.k.a "Madam," who was later identified as accused-appellant, was engaged in the illegal drug trade in Barangay Cadawinonan Housing Project. Thereafter, Senior Police Officer IV Allen Jude Germodo (SPO4 Germodo), team leader, instructed PO1 Delbo to verify this information through a brief casing and surveillance operation. PO1 Delbo confirmed that accused-appellant was engaged in illegal drugs activities. He found out that accused-appellant was not a resident of Cadawinonan Housing Project and that she would just go to the area to sell illegal drugs.[8]

On July 21, 2015 at around 3:00 p.m., SPO4 Germodo conducted a briefing for the buy-bust operation against accused-appellant. During the briefing, PO1 Delbo was designated as the poseur-buyer while Police Officer I Archimedes Olasiman[9] (PO1 Olasiman) was designated as the immediate backup. Police Officer III Rulymar Laquinon (PO3 Laquinon) prepared the buy-bust money consisting of five P100.00 bills.[10] The pre-arranged signal after the consummation of the transaction was for PO1 Delbo to place a call to the cellular phone of SPO4 Germodo. At around 3:50 p.m., the buy-bust team proceeded to the Cadawinonan Housing Project. PO1 Delbo and the CI proceeded to the target area on board a motorcycle while the rest of the team followed on board a Nissan Frontier vehicle. When PO1 Delbo and the CI arrived at the target area, they parked their motorcycle and started walking towards the inner portion of the housing project. The rest of the buy-bust team strategically positioned themselves in the target area.[11]

While walking, PO1 Delbo and the CI saw accused-appellant sitting on a chair along a narrow street in the area. Accused-appellant approached them and asked if they wanted to buy shabu and how much they would buy. PO1 Delbo replied that they wanted to buy "kinye" meaning P500.00 worth of shabu. Accused-appellant asked for the money and PO1 Delbo gave her the P500.00 buy-bust money. Accused-appellant then gave PO1 Delbo one heat-sealed transparent plastic sachet containing white crystalline substance. PO1 Delbo examined the plastic sachet and, upon confirmation that what he received was shabu, he immediately placed a call to SPO4 Germodo. Upon seeing the backup team running towards them, he immediately announced in Visayan dialect his authority, and arrested accused-appellant and informed her of her constitutional rights.[12]

Thereafter, PO1 Delbo placed a masking tape on the sachet of shabu that he had bought from accused-appellant and marked it with the initials "MC-BB 7/21/15." After marking the sachet, PO1 Delbo confiscated a plastic container which contained 11 sachets of white crystalline substance. PO1 Delbo marked the 11 sachets with the initials "MC-P1 7/21/15" to "MC-P11 7/21/15," respectively. He also marked the plastic container and the cellular phone he recovered.[13]

After placing the markings, SPO4 Germodo decided to conduct the inventory at the SOG office for security reasons. PO1 Delbo had custody of all the items seized from accused-appellant. At the SOG office, PO1 Delbo conducted an inventory in the presence of accused-appellant and the required witnesses who just arrived in the office. PO3 Laquinon wrote the entries in the Inventory/Receipt of Property Seized[14] which was signed by PO1 Delbo, SPO4 Germodo, PO1 Olasiman, Department of Justice (DOJ) representative Anthony Chilius Benlot (Benlot), media representative Glenn Serion (Serion), and Cadawinonan Barangay Captain Gilieta Josy Binondo (Barangay Captain Binondo). PO1 Delbo prepared a memorandum request for laboratory examination and drug test addressed to the Provincial Chief of the Philippine National Police (PNP) Crime Laboratory in Dumaguete

City.[15]

Subsequently, PO1 Delbo brought accused-appellant to Negros Oriental Provincial Hospital for physical examination. After the examination, they proceeded to the crime laboratory. Police Officer III Edilmar Manaban (PO3 Manaban) received the seized items contained in a tape-sealed brown envelope from PO1 Delbo. After checking the contents, PO3 Manaban resealed the envelope and kept it in his locker. The next day, he submitted the sealed brown envelope to Police Chief Inspector Josephine Llena (PCI Llena), forensic chemist, who conducted the laboratory examination.[16] The examination revealed that the seized items yielded positive results for the presence of metamphetamine hydrochloride.[17] The urine sample taken from accused-appellant also yielded positive results for the presence of metamphetamine hydrochloride. PCI Llena stipulated that she kept the evidence in the vault of the crime laboratory to which only she had access.[18]

Version of the Defense

Accused-appellant testified that on July 21, 2015, she was on her way to her mother's house in Balayagmanok, Valencia, Negros Oriental on board a scooter driven by a certain "Benjie." They stopped at Cadawinonan Housing Project area to buy gas for the scooter. Accused-appellant was sitting along the inner portion of one of the alleys at the housing project when two male persons dragged her to the main road and told her that they bought drugs from her. Accused-appellant tried to resist and told them that she would only cooperate as long as they allow her to contact her lawyer. Thereafter, she was forced to board a white pick-up where three other police officers were inside. Accused-appellant later found out that the male persons who dragged her from the alley were PO1 Delbo and SPO4 Germodo.[19]

Accused-appellant denied the charges filed against her. She claimed that she was not doing anything illegal when she was arrested and that she saw the drugs for the first time at the SOG office. She believed that the police officers accused her of selling illegal drugs because her husband, Aurelio Casa, Jr., from whom she has been estranged for six years, was engaged in selling illegal drugs. Accused-appellant wanted to file a case against the police officers, but she was advised not to push through with it so as to keep herself from more trouble.[20]

The RTC Ruling

In its March 28, 2017 Decision, the RTC found accused-appellant guilty of illegal sale and illegal possession of dangerous drugs. The dispositive portion of the said decision reads:

WHEREFORE, in the light of the foregoing, the Court hereby renders judgment as follows:

1. In Criminal Case No. 2015-23066, the accused MA. DEL PILAR ROSARIO C. CASA a.k.a "Marfy Calumpang," "Madam," "Mah-mah" is hereby found GUILTY beyond reasonable doubt of the offense of illegal sale and delivery of 0.13 gram of shabu in violation of Section 5, Article II of RA 9165 and is hereby sentenced to suffer a penalty of life imprisonment and to pay a fine of Five Hundred Thousand Pesos (P500,000.00).

The one (1) heat-sealed transparent plastic sachet with markings "MC-BB 7/21/15" containing 0.13 gram of shabu is hereby confiscated and forfeited in favor of the government and to be disposed of in accordance with law.

2. In Criminal Case No. 2015-23067, the accused MA. DEL PILAR ROSARIO C. CASA a.k.a "Marfy Calumpang," "Madam," "Mah-mah" is hereby found GUILTY beyond reasonable doubt of the offense of illegal possession of 10.99 grams of shabu in violation of Section 11, Article II of RA 9165 and is hereby sentenced to suffer a penalty of life imprisonment and to pay a fine of Four Hundred Thousand Pesos (P400,000.00).

The eleven (11) heat-sealed transparent plastic sachets with markings "MC-P1 7/21/15" to "MC-P11 7/21/15,"

respectively, containing an approximate aggregate weight of 10.99 grams of shabu are hereby confiscated and forfeited in favor of the government and to be disposed of in accordance with law.

In the service of sentence, the accused MA. DEL PILAR ROSARIO C. CASA a.k.a "Marfy Calumpang," "Madam," "Mah-mah" shall be credited with the full time during which she has undergone preventive imprisonment, provided she agrees voluntarily in writing to abide by the same disciplinary rules imposed upon convicted prisoners.

SO ORDERED.[21]

The RTC gave credence to PO1 Delbo's testimony over accused-appellant's defenses of denial and frame-up. It held that the prosecution was able to establish the elements of illegal sale and illegal possession of dangerous drugs under Secs. 5 and 11, Art. II of R.A. No. 9165, as amended. It explained that the arresting officers followed the required procedure and that the integrity of the seized drugs was properly preserved. The RTC opined that the police officers regularly performed their duties and their narration of what transpired during the buy-bust operation credible.

The CA Ruling

In its November 29, 2018 Decision, the CA affirmed accused-appellant's conviction. The fallo of the decision states:

WHEREFORE, the Joint Judgment of the Regional Trial Court (RTC), Branch 30, Dumaguete City dated March 28, 2017 convicting Ma. Del Pilar Rosario C. Casa a.k.a "Marfy Calumpang," "Madam," "Mah-mah" of Violations of Section 5 and Section 11, Article II of RA 9165 or the Comprehensive Dangerous Drugs Act is AFFIRMED.

Costs against the accused-appellant.

SO ORDERED.[22]

The CA held that accused-appellant was caught in flagrante delicto in a legitimate entrapment operation while selling illegal drugs in the presence of PO1 Delbo. It also sustained the RTC's findings that the prosecution was able to establish all the elements of illegal sale and illegal possession of dangerous drugs. The CA likewise held that the police officers were able to preserve the integrity and evidentiary value of the seized items from the moment the items were taken from accused-appellant until they were presented in court as evidence. The CA affirmed that the police officers regularly performed their duties and that accused-appellant's defenses of denial and frame-up cannot prevail over the positive testimony of the prosecution witnesses.

Hence, this appeal.

Issues

Accused-appellant raises the following errors:

I.

[THE TRIAL COURT ERRED] IN GIVING CREDENCE TO THE UNCORROBORATED TESTIMONY OF [PO1 DELBO] WHICH IS INCREDIBLE, INCONSISTENT AND ALSO CONTRARY TO NORMAL HUMAN EXPERIENCE AND BEHAVIOR.

II.

[THE TRIAL COURT ERRED] IN FINDING THAT THE PROSECUTION ESTABLISHED COMPLIANCE WITH THE REQUISITES OF [SEC. 21 OF R.A. NO. 9165],

III.

[THE TRIAL COURT ERRED] IN FINDING THAT THE PROSECUTION'S EVIDENCE IS SUFFICIENT TO PROVE THE GUILT OF THE ACCUSED-APPELLANT BEYOND REASONABLE DOUBT.[23]

In her Appellant's Brief[24] before the CA, accused-appellant insists that the trial court should not have given credence to the testimony of PO1 Delbo as it was incredible and uncorroborated by the testimonies of the other prosecution witnesses. Accused-appellant claims that none of the prosecution witnesses corroborated the testimony of PO1 Delbo that an actual buy-bust operation had taken place. Accused-appellant also avers that no photograph of her was taken by the police officers and that she was not present during the inventory of the seized items. She claims that the police officers' noncompliance with the requirements laid down in Sec. 21 of R.A. No. 9165 justifies her acquittal.

In its Appellee's Brief[25] before the CA, the Office of the Solicitor General (OSG) urges this Court to affirm the challenged decision of the RTC because the prosecution duly proved all the elements of illegal sale and illegal possession of dangerous drugs. The OSG argues that the sole testimony of PO1 Delbo is sufficient to prove that a buy-bust operation actually transpired. It also insists that the chain of custody rule was complied with and that the arresting officers were able to preserve the integrity and evidentiary value of the seized items. The OSG also claims that accused-appellant was included in the photographs taken during the inventory as testified by PO1 Olasiman, the designated photographer. It also alleges that the DOJ representative testified that accused-appellant was present during the conduct of inventory.

The Court's Ruling

The Court finds the appeal meritorious.

There is reasonable doubt as to
the elements of the crimes of
illegal sale and illegal
possession of dangerous drugs.

To sustain a conviction for the offense of illegal sale of dangerous drugs, the necessary elements are: (1) the identity of the buyer and the seller, the object and the consideration; and (2) the delivery of the thing sold and the payment.[26] It is essential that a transaction or sale be proved to have actually taken place coupled with the presentation in court of evidence of the corpus delicti. [27] The corpus delicti in cases involving dangerous drugs is the presentation of the dangerous drug itself and its offer as evidence.

On the other hand, to successfully prosecute a case of illegal possession of dangerous drugs, the following elements must be established: (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 drug.[28]

In both cases, it is essential that the identity of the seized drugs be established with moral certainty, and it must be proven with exactitude that the substance bought/recovered during the buy-bust operation is exactly the same substance offered in evidence before the court.[29] This requirement is known as the chain of custody rule under R.A. No. 9165, created to safeguard against doubts concerning the identity of the seized drugs.[30]

In proving the existence of the elements of the crime charged, the prosecution has the heavy burden of establishing the same. The prosecution must rely on the strength of its own evidence and not on the weakness of the defense.[31] In accordance with these principles, the Court has held that, considering the gravity of the penalty for the offense charged, courts should be careful in receiving and weighing the probative value of the testimony of an alleged poseur-buyer especially when it is not corroborated by any of his teammates in the alleged buy-bust operation.[32]

In the instant case, the Court is not convinced that the elements of the crimes charged are present. The prosecution relied on the testimonies of its seven witnesses: PO1 Delbo, PO1 Olasiman, Philippine Drug Enforcement Agency (PDEA) Agent Carlito Mascardo, Jr., PO3 Laquinon, PDEA Intelligence Officer I Ivy Claire Oledan (IO1 Oledan), DOJ representative Benlot and SPO4 Germodo.

With respect to the charge of illegal sale of dangerous drugs, a closer look at the testimonies of the witnesses other than PO1 Delbo reveals that they did not actually see the alleged sale of illegal drugs between accused-appellant and PO1 Delbo. The members of the buy-bust team were positioned only 10 to 15 meters away from the area where PO1 Delbo purportedly transacted with accused-appellant. However, they admitted that they did not see the transaction. It is highly improbable that none of the backup officers present at the crime scene would not notice the sale that allegedly transpired when in fact they should be surreptitiously watching accused-appellant. Clearly, the RTC and the CA merely relied on the uncorroborated testimony of PO1 Delbo.

Thus, the existence of the alleged transaction hinged solely on the testimony of the poseur-buyer because all the other witnesses presented by the prosecution admitted not seeing the transaction. There was no other witness presented to corroborate the testimony of PO1 Delbo, the poseur-buyer.

In *People v. Ordiz*,^[33] the Court held that:

It is an ancient principle of our penal system that no one shall be found guilty of crime except upon proof beyond reasonable doubt. Thus, in proving the existence of the aforesaid elements of the crime charged, the prosecution has the heavy burden of establishing the same. The prosecution must rely on the strength of its own evidence and not on the weakness of the defense.

In accordance with these principles, the Court has held that, considering the gravity of the penalty for the offense charged, courts should be careful in receiving and weighing the probative value of the testimony of an alleged poseur-buyer especially when it is not corroborated by any of his teammates in the alleged buy-bust operation. Sheer reliance on the lone testimony of an alleged poseur-buyer in convicting the accused does not satisfy the quantum of evidence required in criminal cases, that is, proof beyond reasonable doubt.^[34] (Emphasis supplied)

Here, the prosecution's case regarding the alleged transaction involving dangerous drugs relied mostly on the uncorroborated testimony of the supposed poseur-buyer. As will be discussed *infra*, some parts of PO1 Delbo's testimony are either lacking in detail or unclear. To reiterate, sheer reliance on the sole testimony of an alleged poseur-buyer fails to satisfy the quantum of evidence of proof beyond reasonable doubt.^[35]

With respect to the charge of illegal possession of dangerous drugs, the Court finds that the circumstances regarding the alleged possession are also doubtful and unclear. According to PO1 Delbo, accused-appellant approached them and asked if they wanted to buy shabu and how much they were going to buy. PO1 Delbo replied that they wanted to buy "kinye" meaning P500.00 worth of shabu. Accused-appellant asked for the money and PO1 Delbo gave her the P500.00 buy-bust money. According to PO1 Delbo, accused-appellant "picked a plastic container at the left front pocket,"^[36] and then "picked one (1) [sachet] and gave it to [him]."^[37] PO1 Delbo examined the plastic sachet and upon confirmation that what he received was shabu, he immediately placed a call to SPO4 Germodo. Upon seeing the backup team running towards them, he immediately announced in Visayan dialect his authority, and arrested accused-appellant and informed her of her constitutional rights.^[38] Thereafter, PO1 Delbo placed a masking tape on the sachet of shabu that he had bought from accused-appellant and marked it with the initials "MC-BB 7/21/15."

After all these events – from the time he called the backup team, the arrest of accused-appellant, and up to the marking of the seized items from the transaction – PO1 Delbo claims that accused-appellant was still holding the

purported plastic container, from which the plastic sachet came from:

Q

How did you arrest her?

A

I informed the nature of her arrest and her constitutional rights, sir, in the dialect known to her.

Q

Did you ask if she understood what you have informed her?

A

Yes, sir. I asked her, sir, if she understood. She answered affirmatively, sir.

Q

What do you mean affirmatively?

A

She nodded her head, sir.

Q

So after you have arrested the accused and informed her of her constitutional rights, what did you do next?

A

I marked first the shabu that I bought from her, sir, because at that time, sir, she was holding another container that had shabu inside, sir.[39] (Emphasis supplied)

Indeed, it was quite incredible that accused-appellant was holding a plastic container, supposedly containing dangerous drugs, in the open and in plain view of PO1 Delbo for an extended period of time. Glaringly, as demonstrated by the testimony of PO1 Delbo, he claims that he already knew that the plastic container allegedly held by accused-appellant contained dangerous drugs even if he had not yet examined said plastic container. It is highly suspicious that PO1 Delbo was already aware that the plastic container contained shabu despite the fact that he had not yet seen the contents of the container since he was still busy marking the purported drugs he bought from accused-appellant.

Further, despite presenting several witnesses who were involved in the buy-bust operation, none of them testified on PO1 Delbo's act of recovering the other sachets of purported shabu from the plastic container that accused-appellant was supposedly holding during the entire period of the operation. Curiously, IO1 Oledan, who was designated to search accused-appellant after the arrest, testified that she never recovered any contraband from accused-appellant:

Q

What did you do upon arriving at the area?

A

My initial assignment was to secure the perimeter. And then after which, since the suspect was a female, I was asked by Police Germodo to conduct a body search on the arrested person.

Q

Did you conduct a body search on the arrested person?

A

Yes, sir.

Q

What was the result of your search?

A

I did not recover or confiscate anything from the body of Marfy Calumpang, sir.[40] (Emphasis supplied)

Based on the foregoing, the Court is not convinced that the prosecution proved that a transaction involving dangerous drugs had taken place. Similarly, the prosecution failed to establish that accused-appellant indeed possessed dangerous drugs due to the uncertainty on how these items were seized from her.

Chain of custody

Even on the basis of the chain of custody rule, the Court finds that the guilt of accused-appellant of the crimes charged was not proven. Chain of custody means the duly recorded, authorized movements, and custody of the seized drugs at each stage, from the moment of confiscation to the receipt in the forensic laboratory for examination until its presentation in court.[41]

Notably, Sec. 21 of R.A. No. 9165 was amended by R.A. No. 10640, which became effective on August 7, 2014. Since the alleged offense was committed on July 21, 2015, or after its amendment, the provisions of R.A. No. 10640 shall apply.

Sec. 21(1) of R.A. No. 9165, as amended by R.A. No. 10640, provides:

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.

Dissecting Sec. 21(1) of R.A. No. 9165, as amended by R.A. No. 10640 shows that it consists of three parts.

First part of Sec. 21(1) of R.A.

No. 9165, as amended

The first part of Sec. 21(1) of R.A. No. 9165, as amended by R.A. No. 10640 provides that:

(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 supplied)

Aside from immediately taking the inventory and photographs of the seized items, the law requires that these must be conducted 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 (NPS) or the media. In several cases, the Court held that failure to immediately conduct any inventory and taking of photographs of the seized items shall constitute noncompliance with Sec. 21 of R.A. No. 9165.[42]

R.A. No. 9165, as amended by R.A. No. 10640, now only requires, aside from the accused or his/her representative, two witnesses to be present during the physical inventory and photographing of the seized items: (1) an elected public official; and (2) either a representative from the NPS or the media.[43] There have been several cases decided by the Court, which stated that if the "insulating witnesses" required by the law are not present during the physical inventory and photographing of the seized items, then it constitutes as noncompliance with the chain of custody rule.[44]

Also, the law expressly states that the apprehending team shall "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." [45] The law only requires the accused, or his or her representative or counsel, or the insulating witnesses to be present during the inventory. However, the accused, or his or her representative or counsel, is not required to sign the copies of the inventory or the seized items. Only the signatures of the insulating witnesses are mandatory in the inventory report. In *People v. Lim* [46] (Lim), the Court provided the following guidelines:

- In the sworn statements/affidavits, the apprehending/seizing officers must state their compliance with the requirements of Section 21(1) of R.A. No. 9165, as amended, and its IRR.
- In case of nonobservance of the provision, the apprehending/seizing officers must state the justification or explanation therefor as well as the steps they have taken in order to preserve the integrity and evidentiary value of the seized/confiscated items.
- If there is no justification or explanation expressly declared in the sworn statements or affidavits, the investigating fiscal must not immediately file the case before the court. Instead, he or she must refer the case for further preliminary investigation in order to determine the (non)existence of probable cause.
- If the investigating fiscal filed the case despite such absence, the court may exercise its discretion to either refuse to issue a commitment order (or warrant of arrest) or dismiss the case outright for lack of probable cause in accordance with Section 5, Rule 112, Rules of Court.[47]

Further to the above guidelines, the accused shall not be required to affix his signature in the seized item and the inventory report. Instead, the apprehending officers shall state in their inventory report that it was conducted in the presence of the accused, or his or her representative or counsel, and the insulating witnesses. Again, only the signatures of the insulating witnesses are mandatory in the inventory report. Further, the inventory report should be attached to the sworn statements/affidavits of the apprehending officers to ensure its genuineness and due execution.

Second part of Sec. 21(1) of R.A.
No. 9165, as amended

The second part of Sec. 21(1), or its first proviso, would be the location where the inventory and taking of photographs of the seized items should take place. It provides that:

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.

In *Tumabini v. People*,^[48] it was explained that the difference between a search warrant and a warrantless search with regard to a buy-bust operation is the venue of the conduct of the physical inventory and taking of photographs. When the drugs are seized pursuant to a search warrant, then the physical inventory and taking of photographs shall be conducted at the place where the said search warrant was served.^[49]

On the other hand, when the seizure is pursuant to a warrantless search, such as a buy-bust operation, then the inventory and taking of photographs may be conducted at the nearest police station or at the nearest office of the apprehending officer/team. The operative phrase in that provision is "whichever is practicable." It indicates that, in a warrantless search, the police or apprehending officers have an option to conduct the inventory and taking of photographs of the seized items at the nearest police station or at the office of the apprehending officer/team provided that it is practicable. Failure to comply with such requirement regarding a warrantless search shall constitute as noncompliance with the chain of custody rule.

However, recent jurisprudence clarified that even in a warrantless seizure, the general rule remains that inventory and taking of photographs must be conducted at the place of seizure.

In *People v. Musor*,^[50] it was declared by the Court that 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. It adds that 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 at the office of the apprehending officer/team. The Court added that the explanation provided therein regarding the transfer of inventory and taking of photographs elsewhere, as people were already starting to gather, was insufficient to justify such transfer.

Similarly, in *People v. Tubera*,^[51] the prosecution did not even attempt to explain why it was impracticable to conduct the inventory and taking of photographs at the place of seizure, which lead to the Court acquitting the accused. In *People v. Dumanjug*,^[52] the Court rejected the buy-bust team's argument that it failed to conduct the marking, inventory, and photography of the seized drug immediately at the place of arrest because a crowd of 200 people had gathered, thus, creating a dangerous environment.

Likewise, in *Lim*,^[53] the Court reiterated the general rule that the inventory and taking of photographs in case of warrantless seizures must be conducted at the place of seizure unless there is a threat of immediate or extreme danger; in which case, the inventory and taking of photographs can be conducted at the nearest police station, to

wit:

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.[54] (Emphasis supplied)

The pronouncement in *Lim* was likewise applied in *People v. Salenga* (Salenga),[55] where the police officers simply gave a flimsy excuse that the crowd was getting bigger at the place of seizure; hence, it was treated by the Court as an invalid reason for them to conduct the inventory at the nearest police station.

In the recent ruling in *People v. Taglucop*[56] (Taglucop), the Court settled the place of the conduct of the inventory and taking of photographs under Sec. 21(1) of R.A. No. 9165, as amended. In that case, there was a warrantless search conducted pursuant to a buy-bust operation. The inventory and taking of photographs of the seized items were conducted at the nearest police station, and not at the place of seizure. It was ruled therein that the prosecution established that it was practicable to conduct the inventory and taking of photographs of the seized items at the nearest police station because of several reasons, such as the gathering crowd, it was already raining, and the place was unsafe. These justifications were consistently included in the judicial affidavits immediately executed by the police after the buy-bust operation. It was underscored that the police officers had the expertise to decide whether it was practicable to conduct the inventory and taking of photographs of the seized items in a warrantless search at the place of seizure or at the nearest police station. The Court held:

The foregoing testimony of SPO2 Gilbuena was likewise corroborated by P/Insp. Lacana in his testimony as to the marking of the seized drugs at the place of arrest and the inventory conducted at the police station. P/Insp. Lacana testified that they had to transfer to the police station since the place was unsafe. Evidently, the prosecution presented three justifications to conduct the inventory and taking of photographs at the nearest police station:

- There was a crowd gathering in the place;
- It was already raining; and
- The place of seizure was unsafe at that time.

Unlike in the previous cases of *Musor* and *Salenga*, where the prosecution simply gave flimsy excuses for not conducting the procedures at the place of seizure, the present case provides a different scenario. To the judgment of the police officers conducting the operation, the gathering crowd and the ongoing rain could jeopardize the seized items. Considering that the seized items were crystallized substances, such are susceptible to contamination from water or rain. Accordingly, it was understandable for the police officers to conduct the inventory and taking of photographs at the nearest police station, where the complete insulating witnesses were present.

Notably, the explanation provided by the police officers were indicated in the judicial affidavits of SPO2 Gilbuena and P/Insp. Lacana, which were both executed on July 3, 2016, or merely a day after the conduct of the buy-bust operation on July 2, 2016. Evidently, their justifications provided for the inventory and taking of photographs at the nearest police station were still fresh in the minds of the police officers and were not just concocted excuses. The said affidavits clearly established in detail how the transaction with accused-appellant happened, from the moment the CI introduced SPO2 Gilbuena to accused-appellant as someone interested in buying shabu to the consummation of the sale. Their testimonies likewise detailed who marked and how the markings were made, and the subsequent transfer to the police station for the inventory and photography.

Indeed, upon the arrival of the representatives from the media and the DOJ at the police station, said witnesses checked the pieces of evidence recovered from accused-appellant and conducted the inventory thereof. Thus,

the required three witnesses under Sec. 21 of R.A. No. 9165 were all present during the conduct of the inventory. The prosecution was able to establish that the inventory of the seized items was done at the police station and in the presence of the required witnesses under Sec. 21: accused-appellant, elected barangay officials Hermosada, Villahermosa, and Antipolda, DOJ representative Indonto, and media representative Cloribel. Said insulating witnesses then signed the Certificate of Inventory of the seized items. Photographs of accused-appellant, together with the evidence, were likewise taken.[57] (Emphases in the original; citations omitted)

As current jurisprudence stand, in case of warrantless seizures, the inventory and taking of photographs generally must be conducted at the place of seizure.[58] The exception to this rule where the physical inventory and taking of photographs of the seized item may be conducted at the nearest police station or at the nearest office of the apprehending officer or team is when the police officers provide justification that:

- It is not practicable to conduct the same at the place of seizure; or
- The items seized are threatened by immediate or extreme danger at the place of seizure.[59]

Nevertheless, in *People v. Pacnisen*,[60] the Court reminded that "[i]n buy-bust situations, or warrantless arrests, the physical inventory and photographing are allowed to be done at the nearest police station or at the office of the apprehending officer/team, whichever is practicable. But even in these alternative places, such inventory and photographing are still required to be done in the presence of the accused and the [insulating] witnesses." [61]

Notably, the Revised Philippine National Police Operational Procedures dated September 2021 (2021 PNP Manual) is in accordance with this interpretation of the second part of Sec. 21(1) of R.A. No. 9165, as amended, regarding warrantless seizures, to wit:

2.8 Rules on Anti-Illegal Drugs Operations

x x x x

1) Drug Evidence

a) Upon seizure or confiscation of dangerous drugs or CPECs, laboratory equipment, apparatus and paraphernalia, the operating unit's seizing officer/inventory officer must conduct the photographing, marking and physical inventory in the place of operation in the presence of:

(1)

The suspect/s or the person/s from whom such items were confiscated and/or seized or his/ her representative or counsel;

(2)

An elected public official; and

(3)

Representative from the National Prosecution Service (NPS) or media, who shall affix their signatures and who shall be given copies of the inventory. The Chain of Custody Form for Drug Evidence, Non-Drug Evidence and for Laboratory (Annex "T", "U" and "V"), whichever is applicable, shall also be accomplished together with the Certificate of Inventory of Seized Items (Annex "W").

b) For seized or recovered drugs covered by search warrants, the photographing, marking and inventory must be done in the place where the search warrant was served.

c) For warrantless seizures like buy-bust operations, the photographing, markings, and physical inventory must be done at the place of apprehension, unless for justifiable reasons, the photographing, markings, and physical inventory may be made at the nearest police station or office of the apprehending officer or team, ensuring that the integrity and evidentiary value of the seized items remain intact and preserved. Such justification or explanation as well as the steps taken to preserve the integrity and evidentiary value of the seized/confiscated items shall be clearly stated in a sworn affidavit of justification/explanation of the apprehending/ seizing officers.[62] (Emphasis supplied)

The alternative interpretation of the second part of Sec. 21(1) of R.A. No. 9165, as amended, is not warranted

During the deliberations of this case before the Court, there was an alternative proposition in interpreting Sec. 21(1) of R.A. No. 9165, as amended. The alternative proposition materially states that in a warrantless seizure involving dangerous drugs, such as a buy-bust operation, the police officers do not need to provide any reason whatsoever before they may conduct the inventory at the nearest police station or at the nearest office of the apprehending officer/team.[63]

However, after thoughtful and meaningful discussions, the Court finds that this alternative proposition in interpreting the second part or first proviso of Sec. 21(1) of R.A. No. 9165, as amended, is not warranted for the following reasons:

First, 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 when the police officers may conduct the inventory at the nearest police station or at the nearest office of the apprehending officer/team. It demonstrates the plain meaning of the statute that only when the police officers offer a "practicable" reason for the conduct of the inventory at the nearest police station or at the nearest office of the apprehending officer/team shall the law allow a deviation on the location of the inventory. Absent such "practicable" reason, then the police officers should instead conduct the inventory and taking of photographs of the seized items at the place of seizure.

In *Philippine Amusement and Gaming Corp. v. Philippine Gaming Jurisdiction, Inc.*,^[64] the Court explained the importance of reading the plain meaning of a statute, thus:

The 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 it differently. For the legislature is presumed to know the meaning of the words, to have used them advisedly, and to have expressed the intent by use of such words as are found in the statute. *Verba legis non est recedendum*. From the words of a statute there should be no departure.[65]

Second, while Senators Grace Poe and Vicente Sotto III (Senator Sotto) made sponsorship speeches for Senate Bill No. (SB) 2273, which eventually became R.A. No. 10640, expressing that they propose to make the conduct of the inventory "not difficult" for the law enforcement agencies,[66] such purported change of policy is not reflected in the text of the contested proviso regarding the place of inventory. When Sec. 21 of R.A. No. 9165 was amended by R.A. No. 10640, it still kept and unequivocally sustained the phrase "whichever is practicable."

Indeed, it retains the provision of the law 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.

It is axiomatic in legal hermeneutics that statutes should be construed as a whole and not as series of disconnected articles and phrases. In the absence of a clear contrary intention, words and phrases in statutes should not be interpreted in isolation from one another. A word or phrase in a statute is always used in association with other words or phrases and its meaning may, thus, be modified or restricted by the latter.[67]

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

As the Court explained in *Malaria Employees and Workers Association of the Philippines, Inc. v. Romulo*:[68]

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.[69]

Third, the alternative proposition is that even though the law contains the phrase "whichever is practicable," the police officers may still – as a general rule in warrantless seizure – conduct the inventory and taking of photographs at the nearest police station or at the nearest office of the apprehending officer/team, without giving any explanation whatsoever. But as an exception, the police officers may conduct the said inventory at the place of seizure if they so desire.[70]

However, this alternative proposition will render the phrase "whichever is practicable" under Sec. 21(1) of R.A. No. 9165, as amended, nugatory, inoperable, and virtually non-existent. Without the stringent compulsion of the law, no police officer will genuinely conduct the inventory at the place of seizure simply because they have the uninhibited discretion to undertake the inventory at the nearest police station or nearest office of the apprehending officer/team.

For example, a buy-bust operation was conducted in broad daylight in a remote area where the quantity of the illegal drug seized is less than one gram, the most common quantity in buy-bust operations that the Court encounters in appealed cases. As a buy-bust operation is a pre-planned activity, the police were able to secure the attendance of all the required witnesses at the exact time and place of seizure. The police officers also have all the necessary equipment to conduct the inventory and taking of photographs of the seized items at the place of seizure. Likewise, there is no threat to the safety of the law enforcement agencies at the place of seizure. However, the nearest police station or the nearest office of the apprehending officer/team is 30 kilometers away.

Based on the alternative proposition, the police officers, without any rhyme or reason, can just conduct the inventory 30 kilometers away at the nearest police station, even though it could have been logically, feasibly and "practicably" be conducted at the place of seizure. Worse, the police officers will not be castigated, reproached or rebuked for their specious and capricious actions of conducting the inventory 30 kilometers away at the nearest police station; instead at the place of seizure. Frankly, this is not the interpretation contemplated by Sec. 21(1) of

R.A. No. 9165, as amended.

Senior Associate Justice Marvic M.V.F. Leonen (SAJ Leonen) thoughtfully adds that "the requisite that the physical inventory and taking of photographs must be done immediately after the seizure and confiscation of the contraband serves to account for the time frame within which custody of the contraband transfers from the accused to the apprehending officer. x x x [W]hen this interval increases, the exhibit gathered becomes susceptible to contamination or tampering. It thus follows that the requirement be accomplished in the place of seizure to satisfy the element of immediacy." [71]

As brilliantly expounded by Associate Justice Alfredo Benjamin S. Caguioa in his Separate Concurring Opinion, "x x x strict compliance with the immediate inventory and photographing requirement offers to the Court an independent and impartial source of evidence on the very facts of the case upon which the elements of the crime would be based, reinforced with a guarantee that there was little to no time for any pernicious interference to taint the chain." [72] "Verily, the element of immediacy is grounded on this reality: as the time gap from the seizure of the dangerous drugs or paraphernalia to its inventory and photographing widens, the greater its vulnerability to contamination or to abuse becomes." [73]

Fourth, there may be some apprehension that requiring the police officers, as general rule in warrantless seizure, to conduct the inventory at the place of seizure may be too "difficult." However, such concern is more apparent than real.

In *Taglucop*, the inventory and taking of photographs of the seized items were conducted at the nearest police station, and not at the place of seizure. Notably, the prosecution established that it was practicable to conduct the inventory and taking of photographs of the seized items at the nearest police station because of several reasons, such as the gathering crowd, it was already raining, and the place was unsafe.

When the police officers are able to provide a sensible reason, which is practicable, consistent, and not merely generic or afterthought excuses, then the courts will recognize that the police officers indeed may conduct the inventory at the nearest police station or at the nearest office of the apprehending officer/team. Such reason must be indicated in the affidavits of the police officers who participated in the buy-bust operation, pursuant to the guidelines provided in the case of *Lim*. [74]

Further, it was underscored in *Taglucop* that the police officers had the expertise to decide whether it was practicable to conduct the inventory and taking of photographs of the seized items in a warrantless search at the place of seizure or at the nearest police station. They are in the best position to verify and determine the relevant circumstance in each particular buy-bust operation whether it is not anymore practicable to conduct the inventory at the place of seizure. Indeed, the Court recognizes the specialized training and knowledge of the police officers to recognize that it is more practicable to conduct the inventory and taking of photographs of the seized items at the nearest police station or at the nearest office of the apprehending officer/team, to wit:

The apprehending team deemed it unsafe to remain at the scene since the surrounding circumstances would have a direct impact on the conduct of the inventory of the seized items. The rain could even destroy the seized drugs if the apprehending team would remain at the place of seizure. The police officers were in the best position to determine whether the surrounding circumstances could compromise the safety of the buy-bust team, as well as the witnesses, and even the drugs seized from accused-appellant.

The police officers considered that the inventory at the nearest police station would better provide effective measures to ensure the integrity of the seized drugs since a safe location makes it more probable for the inventory and photography of the seized drugs to be done properly. This is in contrast to the public place where the buy-bust operation was done, considering the gathering crowd and the rain, rendering the place unsafe. [75]

Accordingly, the fear that the police officers would not be able to provide a practicable reason for the conduct of the inventory at the nearest police station or at the nearest office of the apprehending officer/team is utterly unfounded. Instead, as stated in Taglucop, Sec. 21(1) regarding the venue of the conduct of the inventory is neither difficult nor impossible to implement. On the contrary, this provision is completely and entirely reasonable for the police officers due to their expertise in handling buy-bust operations, to wit:

Verily, if the Court would require absolute, undeniable, perfect, and unfathomable evidence from the prosecution to justify the change of venue of the inventory and taking of photographs, then the provision of Sec. 21(1), which allows the conduct of the same at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, would practically be unachievable and shall never see the light of day in actual police operations. *Lex non cognit ad impossibilia*. The law does not require the impossible.

In the Court's view, it is the police officers who have the expertise to decide whether it is practicable to conduct the inventory and taking of photographs of the seized items in a warrantless search at the place of seizure or at the nearest police station. As long as the police officers provide a sufficient reason for the change of venue for the conduct of the inventory and taking of photographs, then, it must be allowed.

Accordingly, the Court finds that the prosecution had proven compliance with the first and second parts of Sec. 21(1) of R.A. No. 9165, as amended. The mandatory requirements provided by law under the chain of custody rule were satisfactorily fulfilled.[76]

Indeed, the courts recognize the proficiency and skill of the police officers to determine whether it is clearly not practicable to conduct the inventory at the place of seizure during a warrantless seizure. In other words, the police officers merely need to provide a practicable reason to the court in order to justify the conduct of the inventory at the nearest police station or at the nearest office of the apprehending officer/team. It is not something that the law asks too much from them.

Only when the police officers fail to comply with such modest and straightforward task of providing a practicable reason for the conduct of the inventory, not at the place of seizure, but at the nearest police station or at the nearest office of the apprehending officer/team, shall it result into a deviation from the chain of custody rule. The failure to observe this requirement of the law was demonstrated in the cases of *People v. Tubera*,^[77] *People v. Dumanjug*,^[78] *People v. Musor*,^[79] and *Salenga*,^[80] which led to the noncompliance with Sec. 21 of R.A. No. 9165, as discussed above.

Further, as highlighted by Justice Caguioa, a buy-bust operation is a pre-planned operation, thus, "the enforcement authorities would easily have enough time and opportunity to make the necessary preparations to conduct the inventory and photographing 'without moving or altering [the] original position' of the seized items, that is, at the place of apprehension. Thus, the buy-bust team should not simply be sanctioned to choose, at their convenience, to conduct the inventory at the nearest police station or at the nearest office of the apprehending officer or team."^[81]

Likewise, it was emphasized in the sponsorship speech of Senator Sotto that "the safety of the law enforcers and other persons required to be present in the inventory and photography of seized illegal drugs and the preservation of the very existence of seized illegal drugs itself [may be] threatened by an immediate retaliatory action of drug syndicates at the place of seizure."^[82] This concern is addressed by the interpretation provided by the Court in this case because when "the items seized are threatened by immediate or extreme danger at the place of seizure,"^[83] such would be a valid justification to conduct the inventory at the nearest police station or at the nearest office of the apprehending officer/team.

Finally, when all is said and done, the Court must return to the purpose and intent of the chain of custody rule under Sec. 21 of R.A. No. 9165, as amended. "In drug cases, the dangerous drug itself is the very corpus delicti of the violation of the law. Consequently, compliance with the rule on chain of custody over the seized illegal drugs is crucial in any prosecution that follows a buy-bust operation. The rule is imperative, as it is essential that the prohibited drug recovered from the suspect is the very same substance offered in court as exhibit; and that the identity of said drug is established with the same unwavering exactitude as that requisite to make a finding of guilt." [84]

As judiciously explained by SAJ Leonen, "[t]o prevent tampering, substitution, and planting of evidence, strict adherence with Section 21 is necessary. Partial or approximate compliance is insufficient. Such a rigid application of the rule is only appropriate due to the fungible nature of the corpus delicti in drugs cases. This is especially so when the amount involved is miniscule." [85] Indeed, the purpose of the chain of custody rule is to guarantee that the item seized from the accused would be the very same item presented in court. This will prevent the planting or tampering of evidence. Accordingly, Sec. 21 of R.A. No. 9165, as amended, was placed as safeguard to those accused in drug offenses in accordance with the presumption of innocence under the Constitution.

The interpretation of Sec. 21(1) of R.A. No. 9165, as amended, as approved by the Court is in accordance with the intent and purpose of the chain of custody rule. It strikes a harmonious balance between the intent of the law in protecting the accused against the evils of planting and switching of dangerous drugs immediately after the 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 at the nearest office of the apprehending officer/team.

The alternative proposition – that the police officers in warrantless seizure have the unfettered discretion to conduct the inventory at the nearest police station or at the nearest office of the apprehending officer/team; and not at the place of seizure – is not in accordance with the spirit and intent of the chain of custody rule in ensuring that integrity and evidentiary value of the dangerous drug are maintained at the very exact moment of seizure.

In any case, even if the police officers do not absolutely and perfectly comply with the requirements of Sec. 21 under R.A. No. 9165, as amended, particularly, as to the proper place of the conduct of the inventory, they still have opportunity to apply the saving clause, which will be discussed infra.

Last part of Sec. 21(1) of R.A.
No. 9165, as amended

The third and final portion of Sec. 21(1) refers to the saving clause. It states that:

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.

This portion was initially found in the IRR of R.A. No. 9165. However, in the advent of R.A. No 10640, it is now included in the text of the law. While the chain of custody has been a critical issue leading to acquittals in drug cases, the Court has nevertheless held that noncompliance with the prescribed procedures does not necessarily result in the conclusion that the identity of the seized drugs has been compromised so that an acquittal should follow. [86] The last portion of Sec. 21(1), provides a saving mechanism to ensure that not every case of noncompliance will irretrievably prejudice the prosecution's case. [87]

In *People v. Luna*, [88] the Court laid down the requisites to apply the saving clause:

As a rule, strict compliance with the foregoing requirements is mandatory. However, following the IRR of RA 9165, the courts may allow a deviation from these requirements if the following requisites are availing: (1) the existence of "justifiable grounds" allowing departure from the rule on strict compliance; and (2) the integrity and the evidentiary value of the seized items are properly preserved by the apprehending team. If these two elements concur, the seizure and custody over the confiscated items shall not be rendered void and invalid; ergo, the integrity of the corpus delicti remains untarnished. x x x

x x x x

Following a plain reading of the law, it is now settled that [noncompliance] with the mandatory procedure in Section 21 triggers the operation of the saving clause enshrined in the IRR of RA 9165. Verbal egis non est recedendum — from the words of a statute there should be no departure. Stated otherwise, in order not to render void and invalid the seizure and custody over the evidence obtained, the prosecution must, as a matter of law, establish that such [noncompliance] was based on justifiable grounds and that the integrity and the evidentiary value of the seized items were preserved. Hence, before the prosecution can rely on this saving mechanism, they (the apprehending team) must first recognize lapses, and, if any are found to exist, they must justify the same accordingly.[89] (Emphasis supplied)

Accordingly, before the prosecution can invoke the saving clause, they must satisfy the two requisites:

- The existence of "justifiable grounds" allowing departure from the rule on strict compliance; and
- The integrity and the evidentiary value of the seized items are properly preserved by the apprehending team.

Whenever the first prong is not complied with, the prosecution shall not be allowed to invoke the saving clause to salvage its case. In *Valencia v. People*,^[90] it was underscored that the arresting officers are under obligation, should they be unable to comply with the procedures laid down under Sec. 21, Art. II of R.A. No. 9165, to explain why the procedure was not followed and prove that the reason provided a justifiable ground. 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.^[91] Similarly, in *People v. Acub*,^[92] the Court also did not apply the first prong of the saving clause because, despite the blatant lapses, the prosecution did not explain the arresting officers' failure to comply with the requirements in Sec. 21.

On the other hand, the second prong requires that the integrity and the evidentiary value of the seized items are properly preserved by the apprehending team. According to *People v. Adobar*,^[93] the integrity of the seized illegal drugs, despite noncompliance with Sec. 21, requires establishing the four links in the chain of custody: first, the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; second, the turnover of the illegal drug seized by the apprehending officer to the investigating officer; third, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and fourth, the turnover and submission of the marked illegal drug seized from the forensic chemist to the court.^[94]

The first link refers to seizure and marking. "Marking" means the apprehending officer or the poseur-buyer places his/her initials and signature on the seized item. The marking of the evidence 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.^[95]

The second link in the chain of custody is the transfer of the seized drugs by the apprehending officer to the investigating officer. The investigating officer shall conduct the proper investigation and prepare the necessary documents for the proper transfer of the evidence to the police crime laboratory for testing. Thus, the investigating

officer's possession of the seized drugs must be documented and established.[96]

The third link in the chain of custody is the delivery by the investigating officer of the illegal drugs to the forensic chemist. Once the seized drugs arrive at the forensic laboratory, the laboratory technician will test and verify the nature of the substance.[97]

The fourth link refers to the turnover and submission of the dangerous drug from the forensic chemist to the court. In drug-related cases, it is of paramount necessity that the forensic chemist testifies on the details pertaining to the handling and analysis of the dangerous drug submitted for examination, i.e., when and from whom the dangerous drug was received; what identifying labels or other things accompanied it; description of the specimen; and the container it was in. Further, the forensic chemist must also identify the name and method of analysis used in determining the chemical composition of the subject specimen.[98]

Evidently, when the prosecution fails to prove its compliance with the mandatory requirements under the first and second parts of Sec. 21(1) of R.A. No. 9165, as amended by R.A. No. 10640, its only recourse is to invoke the saving clause. However, the saving clause, as an exception to the rule of strict compliance, is not a talisman that the prosecution may invoke at will.[99] Indeed, it is the burden of the prosecution in the application of the saving clause to prove that the integrity and evidentiary value of the seized items were preserved in all the four links in the chain of custody. This is the heavy burden placed on the prosecution, not only due to the presumption of innocence of the accused, but also as a consequence for not complying with the mandatory requirements provided by the first and second parts of Sec. 21(1) of R.A. No. 9165, as amended by R.A. No. 10640.

The prosecution failed to prove compliance under Sec. 21 of R.A. No. 9165, as amended.

Applying the foregoing, the prosecution failed to prove that it had complied with Sec. 21 of R.A. No. 9165, as amended by R.A. No. 10640. As stated earlier, the law requires that the physical inventory and photographing of the seized items be conducted in the presence of the accused or his/her representative or counsel; and that the following insulating witnesses must be present: (1) an elected public official; and (2) either a representative from the NPS or the media. In addition, the law expressly states that the insulating witnesses shall be required to sign the copies of the inventory and be given a copy thereof.[100]

In this case, the Inventory/Receipt of Property Seized[101] was signed by PO1 Delbo, SPO4 Germodo, PO1 Olasiman, DOJ representative Benlot, media representative Serion, and Barangay Captain Binondo. Verily, both the required insulating witnesses were present. However, the said inventory is missing a very crucial information – that the inventory was done in the presence of the accused, or his or her representative or counsel. Indeed, the law requires the fact that the accused, or his or her representative or counsel, was present at the conduct of the inventory and taking of photographs must be stated in the inventory.[102]

As discussed earlier, the accused shall not be required to affix his or her signature in the seized item and the inventory report. Instead, the apprehending officers shall state in their inventory report that it was conducted in the presence of the accused, or his or her representative or counsel, and the insulating witnesses. The inventory report should be attached to the sworn statements/affidavits of the apprehending officers to ensure its genuineness and due execution.

Another defect in the conduct of the inventory and taking of photographs would be the place of their conduct. As discussed earlier, 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 officer/team.

Here, the Joint Affidavit^[103] of PO1 Delbo and PO1 Olasiman states that the team leader decided to conduct the inventory at the police station "for security purposes."^[104] Manifestly, the mere general invocation of "security purposes," without any explanation or detail, is not sufficient to justify that it was actually not practicable to conduct the inventory at the place of seizure, which would necessitate a change of venue to the nearest police station.

In Salenga,^[105] the police officers simply gave a flimsy excuse that the crowd was getting bigger at the place of seizure in justifying the transfer of venue to the nearest police station. However, the Court explained that such general excuse was an invalid reason to conduct the inventory at the nearest police station because it was not proven that it was indeed not practicable to conduct the inventory at the place of seizure.

Accordingly, the prosecution definitely failed to prove its compliance with Sec. 21 of R.A. No. 9165, as amended by R.A. No. 10640.

Saving clause

A. First requisite

Nevertheless, while the chain of custody has been a critical issue leading to acquittals in drug cases, the Court has nevertheless held that noncompliance with the prescribed procedures does not necessarily result in the conclusion that the identity of the seized drugs has been compromised so that an acquittal should follow.^[106] Accordingly, before the prosecution can invoke the saving clause, they must satisfy the two requisites: (1) the existence of "justifiable grounds" allowing departure from the rule on strict compliance; and (2) the integrity and the evidentiary value of the seized items are properly preserved by the apprehending team.^[107]

In this case, the first requisite of the saving clause was not complied with. As stated earlier, the inventory/receipt of property seized was signed only by the insulating witnesses. It was not signed by accused-appellant, even though required by the law.

When questioned regarding the circumstances surrounding the inventory/receipt of property seized, the prosecution witnesses focused instead on explaining the absence of accused-appellant in the pictures during the conduct of the inventory. PO1 Delbo insists that accused-appellant was present during the inventory, but she did not appear in the photographs because she was avoiding the police officers.^[108] On the other hand, PO1 Olasiman testified that accused-appellant was crying during the inventory and did not want to be seated with the insulating witnesses.^[109]

However, the prosecution witnesses were so focused in justifying the absence of accused-appellant in the photographs that they forgot to explain why there was no statement in the inventory report whether accused-appellant was present during the conduct of the inventory. Again, this is a requirement under Sec. 21 of R.A. No. 9165, as amended.

Assuming that accused-appellant was indeed present at the inventory but expressly refused to sign the inventory report, the police officers could have indicated such fact in the inventory report. Under the Guidelines of the IRR of R.A. No. 9165, as amended, if the accused, his or her representative, or any of the insulating witnesses refused to sign the inventory, the police officers may state in the inventory report that such person "refused to sign."^[110] However, the police officers failed to do so. The inventory/receipt of the property seized only contained accused-appellant's bare name; it did not expressly state that accused-appellant was indeed present during the conduct of the inventory, as required by law. This engenders doubt that the dangerous drugs allegedly seized from

accused-appellant were the same drugs presented in court.

Further, the inventory and taking of photographs of the seized items were not conducted at the place of seizure; rather, it was conducted at the police station. The Joint Affidavit^[111] of PO1 Delbo and PO1 Olasiman merely gave a general invocation of "security purposes" for the said transfer of venue.

Glaringly, when the prosecution was given an opportunity during trial to explain the reason for the change of venue in the conduct of the inventory and taking of photographs of the seized item, the prosecution witnesses gave conflicting justifications. PO1 Delbo stated that the team leader decided to transfer venue for security purposes because, at that time, they recently lost a team member.^[112] However, the connection of that incident with the current buy-bust operation conducted against accused-appellant was not explained. Verily, PO1 Delbo did not expound on whether there was existing danger at the same place or vicinity, or against the same group, where the buy-bust operation was being conducted. Such general excuse of "security purposes" is indeed not sufficient to establish that the place of seizure is not a practicable place to conduct the inventory and photography of the seized items.

On the other hand, PO1 Olasiman gave a different explanation. He said that the team leader instructed them to transfer venue because there was already a lot of people in the area.^[113] Again, in *Salenga*, the Court held that the mere fact that the crowd was getting bigger at the place of seizure is not sufficient to justify the transfer of venue to the nearest police station.

Evidently, the explanations provided by PO1 Delbo and PO1 Olasiman are conflicting, insufficient, and do not salvage the general invocation of "security purposes" to establish that it was practicable to change venue to the nearest police station. This present situation is different from *Taglucop* because in this case, the prosecution failed to substantiate that it was practicable to change the venue of the conduct of the inventory and taking of photographs of the seized items, and the police officers gave conflicting statements to justify such change of venue.

Accordingly, the first requisite of the saving clause was not proven by the prosecution. It failed to establish that the apprehending team recognized the lapses under Sec. 21 of R.A. No. 9165, as amended, and also failed miserably to justify the said lapses.

B. Second requisite

Even the second requisite of the saving clause was not proven by the prosecution because the integrity and evidentiary value of the illegal drugs seized were not preserved; particularly, there were breaks in the first and fourth links in the chain of custody.

As to the first link, the marking of the plastic sachets allegedly recovered from accused-appellant was irregularly done. It was not compliant with paragraph 2.35, Sec. 2-6 of the 2014 Revised PNP Manual on Anti-Illegal Drugs Operations and Investigation (2014 PNP Manual), which provides:

2.35. The seizing officer must mark the evidence with his initials indicating therein the date, time and place where the evidence was found/recovered or seized.^[114]

Based on the testimonies of the prosecution witnesses, particularly PO1 Delbo, only the initials of accused-appellant and the date were inscribed on the specimens, omitting the initials of the seizing officer, time, and place of the buy-bust operation, in clear contravention of the PNP's own set of procedures for the conduct of its operations. PO1 Delbo marked the sachets with the following initials: "MC-BB 7/21/15," "MC-P1 7/21/15" to "MC-P11 7/21/15." The initials "MC" refers to Marfy Calumpang, "BB" refers to the buy-bust operation, "P" refers to possession of illegal drugs, while the 7/21/15 refers to the date of the incident. Clearly, there were no

initials of the seizing officer, time, and place of the buy-bust operation.

As discussed by our esteemed colleague Justice Caguioa in his Concurring Opinion, the Court has repeatedly stressed that a buy-bust is a planned operation, and given that the 2014 PNP Manual itself expressly provides its application to all PNP members and its Anti-Illegal Drugs Units in all levels on procedures that must be observed in the course of anti-illegal drugs operations and investigation, it strains credulity why the buy-bust team could not have at least marked the seized items according to the procedures in their own operations manual.[115]

Indeed, while PNP Manuals are not the absolute and controlling requirement for the conduct of the first link under Sec. 21(1) of R.A. No. 9165, as amended, noncompliance thereof still contributes to the uncertainties on whether the marking was properly done by the police officers involved. Evidently, such uncertainties thicken the cloud of doubt surrounding the integrity and evidentiary value of the seized items.

On the other hand, the fourth link refers to the turnover and submission of the dangerous drug from the forensic chemist to the court. In drug-related cases, 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, i.e., when and from whom the dangerous drug was received; what identifying labels or other things accompanied it; description of the specimen; and the container it was in, as the case may be.[116] Further, the forensic chemist must also identify the name and method of analysis used in determining the chemical composition of the subject specimens.[117]

In this case, PCI Llana did not testify in court. Instead, the parties merely entered into general stipulations on her testimony. While stipulations regarding prosecution witnesses are allowed, these stipulations must be complete and must establish that the integrity and evidentiary value of the seized items were preserved. At the very least, the stipulations must state that the laboratory personnel documented the chain of custody each time a specimen is handled or transferred until the specimen is disposed. The stipulations must also specify how the seized items were handled, stored, and safeguarded pending its presentation in court.[118]

In his Concurring Opinion, Justice Caguioa pointed out that in *People v. Ubungen*,[119] the Court has laid down the minimum stipulations before the testimony of the forensic chemist may be dispensed with, i.e., that it "should be stipulated that the forensic chemist would have testified that he took the precautionary steps required in order to preserve the integrity and evidentiary value of the seized item, thus: (1) that the forensic chemist received the seized article as marked, properly sealed, and intact; (2) that he resealed it after examination of the content; and (3) that he placed his own marking on the same to ensure that it could not be tampered pending trial." [120] In addition, the stipulations as to the testimony of the forensic chemist should include "the management, storage, and preservation of the illegal drug allegedly seized after its qualitative examination." [121]

However, the stipulations in the present case are bereft of information regarding the condition of the seized items while in PCI Llana's custody and the precautions she undertook to preserve their integrity. Absent any testimony on the management, storage, and preservation after the qualitative examination of the illegal drugs allegedly seized, this again adds doubt whether the fourth link was duly complied with.[122] This unquestionably contributes to doubts on the identity and the integrity of the corpus delicti.

In *Mallillin v. People*,[123] the Court explained:

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.[124]

Similarly, in *People v. Plaza*,^[125] the Court held:

However, even if the first three (3) links may have been substantially complied with, the fourth link is where the Court takes issue.

x x x x

It has been held that there is a gap or break in the fourth link of the chain of custody where there is absence of evidence to show how the seized shabu was handled, stored, and safeguarded pending its presentation in court. In some instances, when the stipulation failed to identify who received the shabu at the crime laboratory and who exercised custody and possession before and after it was examined, the Court similarly considered that there was a gap in the chain of custody. The instant case has stark similarities with the case of *People v. Prudencio*, where the Court noted:

As mentioned previously, PO1 Magora's testimony never touched upon the details on how the seized drugs were turned over to the investigating officer, nor on how it was turned over to the forensic chemist, P/Sr. Insp. Sta. Maria, for laboratory examination. The only pieces of evidence representing the third link in the chain consisted of the letter-requests for laboratory examination and for drug test, and the corresponding chemistry reports issued by P/Sr. Insp. Sta. Maria.

As to the fourth link, when P/Sr. Insp. Sta. Maria was called to the witness stand, the prosecution and the defense decided to enter into a stipulation regarding what P/Sr. Insp. Sta. Maria would be testifying on if he were presented. Yet, all they stipulated was that he would identify the request for laboratory examination, request for drug test, the subject sachets of shabu, and the chemistry reports.

These pieces of evidence failed to identify the person who personally brought the seized shabu to the Bulacan Provincial Crime Laboratory Office. It also failed to identify who received the shabu at the crime laboratory and who exercised custody and possession before and after it was examined. Neither was there evidence to show how the seized shabu were handled, stored, and safeguarded pending its presentation in court.

Notably, Section 6, paragraph 8 of Dangerous Drugs Board Regulation No. 2, Series of 2003 requires laboratory personnel to document the chain of custody each time a specimen is handled or transferred until the specimen is disposed; it also requires the identification of the individuals participating in the chain. The records are silent regarding compliance with this regulation.

Simply put, serious lapses in the handling of the seized shabu as well as the evidentiary gaps or breaks in the chain of custody are fatal to the prosecution's cause. In effect, the prosecution failed to fully prove the elements of the crimes charged, creating a reasonable doubt on the criminal liability of the accused.

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Even a painstaking review of the records and transcripts yields no results as to information on the chain of custody between the time PDEA Agent Subang confiscated the subject sachet of drugs up to the time it was presented in court. Though the Chain of Custody Document was presented during PSInsp. Signar's testimony, the same was not identified by any witness. While the document contains the signatures of a certain PO1 Randy Dispo and another recipient of the sachet for "safekeeping," the Court is left to surmise on whether the proper procedure was followed during this intervening period. Clearly, there was no identification of all persons who handled the sachet nor was there testimony as to every relevant link in the chain, nor a showing that all possible safeguards were done by the law enforcement agents to protect the integrity of the evidence, as mandated by law

and jurisprudence. This goes against the settled doctrines of this Court requiring these pieces of evidence in the prosecution of drug cases.[126] (Citation omitted)

Clearly, the utter lack of details on the condition and handling of the seized drugs from the period after its examination until the same were brought to the trial court results in a gap in the chain of custody of the seized drugs, thereby casting serious doubt on the identity and integrity of the corpus delicti.

In sum, accused-appellant must be acquitted because the elements of the crime of sale and possession of dangerous drugs were not established. In addition, the chain of custody rule was not properly complied with because the inventory and taking of photographs of the seized items did not follow Sec. 21(1) of R.A. No. 9165, as amended. The prosecution likewise cannot benefit from the saving clause under the same law because it failed to establish justifiable reason for the noncompliance with Sec. 21(1), and failed to prove that the integrity and evidentiary value of the seized items were preserved due to doubts over the first and fourth links in the chain of custody.

In convicting accused-appellant, both the RTC and the CA relied so much on the presumption of regularity in the performance of duty of the police officers and the weak defense offered by accused-appellant. However, the presumption of regularity in the conduct of police officers cannot trump the constitutional right to be presumed innocent until proven guilty.[127] Verily, the unjustified procedural lapses committed by the arresting officers in this case militate against a finding of guilt beyond reasonable doubt against accused-appellant, as there is no sufficient safeguard that the integrity and evidentiary value of the corpus delicti had not been compromised.[128] Thus, accused-appellant's acquittal is in order.

WHEREFORE, the appeal is GRANTED. The Decision dated November 29, 2018 of the Court of Appeals, Cebu City in CA-G.R. CR-HC No. 02574, which affirmed the Joint Judgment dated March 28, 2017 of the Regional Trial Court of Dumaguete City, Negros Oriental, Branch 30 in Crim. Case Nos. 2015-23066 and 2015-23067, is REVERSED and SET ASIDE. Accused-appellant Ma. Del Pilar Rosario C. Casa a.k.a. "Marfy Calumpang," "Madam," and "Mah-mah" is ACQUITTED for failure of the prosecution to prove her guilt beyond reasonable doubt.

The Superintendent of the Correctional Institution for Women, Mandaluyong City is ORDERED to IMMEDIATELY RELEASE accused-appellant from detention, unless she is being lawfully held in custody for any other reason, and to INFORM the Court of the action hereon within five (5) days from receipt of this Decision.

Let entry of judgment be issued immediately.

SO ORDERED.

Hernando, Lazaro-Javier, Inting, Zalameda, Gaerlan, Rosario, J. Lopez, Dimaampao, and Marquez, JJ., concur.

Leonen, SAJ., see Separate Opinion.

Caguioa, J., see Concurring Opinion.

M. Lopez,[*] J., on leave. But left his vote. See Concurring Opinion.

Kho, Jr., J., see Separate Concurring and Dissenting Opinion.

Singh,**] J., on leave. But left her vote.

[*] On leave.

[**] On leave.

[1] Rollo, pp. 7-21; penned by Associate Justice Marilyn B. Lagura-Yap and concurred in by Associate Justices Louis P. Acosta and Emily R. Aliño-Geluz.

[2] CA rollo, pp. 8-23; penned by Judge Rafael Crescencio C. Tan, Jr.

[3] 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."

[4] CA rollo, p. 8.

[5] Id. at 9.

[6] Rollo, p. 10.

[7] Also referred to as "PO2 Delbo" in some parts of the rollo (see rollo, p. 10).

[8] Rollo, p. 10.

[9] Also referred to as "PO2 Olasiman" in some parts of the rollo (see CA rollo p. 80).

[10] CA rollo, p. 10.

[11] Rollo, pp. 10-11.

[12] Id. at 11.

[13] CA rollo, p. 11.

[14] Records, p. 22.

[15] CA rollo, pp. 11-12.

[16] Id. at 12.

[17] Id. at 13.

[18] Id.

[19] Id. at 14.

[20] Id.

[21] Id. at 22-23.

[22] Rollo, p. 20.

[23] CA rollo, pp. 32-33.

[24] Id. at 25-49.

[25] Id. at 62-88.

[26] *People v. Roble*, 663 Phil. 147, 157 (2011).

[27] Id.

[28] *People v. Climaco*, 687 Phil. 593, 603 (2012).

[29] *People v. Alon-Alon*, G.R. No. 237803, November 27, 2019, 926 SCRA 256, 263-264.

- [30] *People v. Climaco*, supra at 604, citing *Mallillin v. People*, 576 Phil. 576, 586 (2008).
- [31] *People v. Ordiz*, G.R. No. 206767, September 11, 2019, 919 SCRA 149, 163.
- [32] Id.
- [33] Supra.
- [34] Id. at 163.
- [35] Id.
- [36] TSN, January 30, 2017, p. 6.
- [37] Id.
- [38] Id. at 9.
- [39] Id. at 8.
- [40] TSN, February 2, 2017, p. 5.
- [41] Dangerous Drugs Board Regulation No. 1 (2002), Section 1(b).
- [42] *People v. Paran*, G.R. No. 220447, November 25, 2019, 925 SCRA 781, 788-789; *People v. Casacop*, 755 Phil. 265, 283 (2015); *People v. De la Cruz*, 666 Phil. 593, 610 (2011).
- [43] *People v. Maganon*, 855 Phil. 364, 372-373 (2019), citing *People v. Lim*, 839 Phil. 598, 617 (2018).
- [44] *Luna v. People*, G.R. No. 231902, June 30, 2021; *Tañamor v. People*, G.R. No. 228132, March 11, 2020; *People v. Pagsigan*, 839 Phil. 466, 472-473 (2018).
- [45] See Section 21, Article II of R.A. No. 9165, as amended by R.A. No. 10640.
- [46] Supra note 43.
- [47] Id. at 625.
- [48] G.R. No. 224495, February 19, 2020, 933 SCRA 60.
- [49] Id. at 81.
- [50] 842 Phil. 1159 (2018).
- [51] 853 Phil. 142 (2019).
- [52] 855 Phil. 645 (2019).
- [53] Supra note 43.
- [54] Id. at 620.
- [55] G.R. No. 239903, September 11, 2019, 919 SCRA 342.
- [56] G.R. No. 243577, March 15, 2022.
- [57] *People v. Taglucop*, supra.
- [58] Id.

[59] Id.

[60] 842 Phil. 1185 (2018).

[61] Id. at 1197.

[62] Revised Philippine National Police Operational Procedures (2021), Chapter 3, pp. 65-66.

[63] See Concurring Opinion of Associate Justice Mario V. Lopez, p. 4, and Concurring and Dissenting Opinion of Associate Justice Antonio T. Kho, Jr., pp. 8-9.

[64] 604 Phil. 547 (2009).

[65] Id. at 553.

[66] See Concurring and Dissenting Opinion of Justice Kho, pp. 8-9.

[67] Meridian Assurance Corp. v. Dayrit, 262 Phil. 880, 883-884 (1990), citing Reformina v. Tomol, Jr., 223 Phil. 472, 479 (1985).

[68] 555 Phil. 629 (2007).

[69] Id. at 639.

[70] See Concurring and Dissenting Opinion of Justice Kho, p. 8.

[71] Concurring Opinion of SAJ Leonen, p. 7.

[72] Concurring Opinion of Justice Caguioa, p. 9.

[73] Id.

[74] People v. Lim, supra note 43 at 624.

[75] People v. Taglucop, supra note 56.

[76] Id.

[77] Supra note 51.

[78] Supra note 52.

[79] Supra note 50.

[80] Supra note 55.

[81] Concurring Opinion of Justice Caguioa, p. 12.

[82] People v. Lim, supra note 43 at 619.

[83] Ponencia, p. 19.

[84] Palencia v. People, G.R. No. 219560, July 1, 2020, citation omitted.

[85] Concurring Opinion of SAJ Leonen, p. 5.

[86] See People v. Denoman, 612 Phil. 1165, 1178 (2009).

[87] Id.

[88] 828 Phil. 671 (2018).

[89] Id. at 686-687.

[90] 725 Phil. 268 (2014).

[91] Id. at 286.

[92] 853 Phil. 171 (2019).

[93] 832 Phil. 731 (2018).

[94] Id. at 763.

[95] *People v. Omamos*, G.R. No. 223036, July 10, 2019, 908 SCRA 367, 379.

[96] *People v. Bangcola*, 849 Phil. 742, 759 (2019).

[97] *People v. Dahil*, 750 Phil. 212, 236 (2015).

[98] *People v. Omamos*, *supra* at 382.

[99] *People v. Acub*, *supra* note 92 at 426.

[100] See Section 21, Article II of R.A. No. 9165, as amended by R.A. No. 10640.

[101] Records, p. 24.

[102] Republic Act No. 10640, Sec. 21(1).

[103] Records, pp. 20-21.

[104] Id. at 21.

[105] *Supra* note 55.

[106] See *People v. Denoman*, *supra* note 86 at 1178.

[107] *People v. Claudel*, 851 Phil. 64, 80 (2019).

[108] TSN, January 30, 2017, p. 12.

[109] TSN, January 31, 2017, p. 7.

[110] Guidelines on the IRR of R.A. No. 9165, as amended, Section 1, A.1.5. The physical inventory and photograph of the seized/confiscated items shall be done in the presence of the suspect or his representative or counsel, with elected public official and a representative of the National Prosecution Service (NPS) or the media, who shall be required to sign the copies of the inventory of the seized or confiscated items and be given copy thereof. In case of their refusal to sign, it shall be stated "refused to sign" above their names in the certificate of inventory of the apprehending or seizing officer.

[111] Records, pp. 20-21.

[112] TSN, January 30, 2017, p. 10.

[113] TSN, January 31, 2017, p. 4.

[114] Revised PNP Manual on Anti-Illegal Drugs Operation and Investigation (2014); This provision has been retained in the 2021 Revised Philippine National Police Operational Procedures, Chapter 3, p. 65, which states

that:

The seizing officer must mark all the evidence seized with his/her initials and signature as well as the date when the evidence was found/recovered or seized, numbered consecutively.

[115] Concurring Opinion of Justice Caguioa, p. 12.

[116] *People v. Nocum*, G.R. No. 239905, January 20, 2021.

[117] Dangerous Drugs Board Regulation No. 1 (2002), entitled, "Guidelines on the Custody and Disposition of Seized Dangerous Drugs, Controlled Precursors and Essential Chemicals, and Laboratory Equipment."

[118] See *People v. Plaza*, 839 Phil. 198, 217 (2018).

[119] 836 Phil. 888 (2018).

[120] Concurring Opinion of Justice Caguioa, p. 12.

[121] *Id.* at 13.

[122] *People v. Ubungen*, *supra* at 902.

[123] *Supra* note 30.

[124] *Id.* at 587.

[125] *Supra*.

[126] *People v. Plaza*, *supra* note 118 at 217-219.

[127] See *People v. Ordiz*, *supra* note 31 at 174.

[128] *People v. Crispo*, 828 Phil. 416, 436 (2018).

SEPARATE OPINION

LEONEN, J.:

I concur with the ponencia. Accused-appellant Ma. Del Pilar Rosario C. Casa (Casa) must be acquitted for failure of the prosecution to establish her guilt beyond reasonable doubt.

The chain of custody rule under Section 21 of Republic Act No. 9165, as amended by Republic Act No. 10640, demands strict compliance. Particularly, the provision provides for the location where the inventory and photographing of the seized items must be done.

If a search warrant was served, the physical inventory and photographing must be done at the exact same place where the search warrant was served.[1] In cases of warrantless seizure, the inventory and taking of photographs generally must be conducted at the place of seizure.[2] As an exception, it may be done at the nearest police station or office of the apprehending team or officer when circumstances are not practicable.[3] However, the defense of impracticability is subject to the following considerations: (a) the extent of planning and preparation that went into organizing the buy-bust operation;[4] (b) the amount of prohibited drugs confiscated;[5] and (c) the position of the accused in the organizational hierarchy of illicit drug trade.[6]

The Constitution is clear: in all criminal prosecutions, the accused shall be presumed innocent until the contrary is proven.[7] This right to be presumed innocent is integral to the right to due process—another constitutional

principle that protects citizens from unlawful deprivation of life, liberty, or property.[8] Thus, the burden is with the State to prove beyond reasonable doubt the presence of "each and every element of the crime charged in the information to warrant a finding of guilt." [9]

As pointed out by the ponencia, the following elements must be established in prosecuting a case of illegal sale of dangerous drugs: (1) that the transaction or sale took place; (2) the corpus delicti or the illicit drug was presented as evidence; and (3) that the buyer and seller were identified.[10] In buy-bust operations, the sale is consummated upon the "delivery of the contraband to the poseur[]buyer and the receipt of the marked money [by the accused]." [11]

Considering the quantum of evidence required, the uncorroborated testimony given by the poseur buyer in an alleged buy-bust operation is manifestly insufficient to warrant a finding of guilt. As previously stated:

[C]ourts should not accept hook line and sinker, the testimony of the alleged poseur-buyer that he was able to buy the prohibited drug from the accused. 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 heroine 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.[12] (Citation omitted)

With entrapment operations being planned and executed in teams, the inability to corroborate the testimony of the poseur buyer casts doubt on whether the illegal sale was even conducted in the first place. In *People v. Escalona*, [13] this Court acquitted the accused due to the "prosecution's failure to present the other members of the alleged buy-bust team." [14] In *People v. Santos, Jr.*, [15] this Court emphasized that the prosecution's failure to present the other police officers who allegedly formed part of the backup team reduced the unsubstantiated testimony of the poseur buyer into a "self-serving assertion." [16] Similarly, in *People v. Ordiz*, [17] this Court noted that the testimonies of the other members of the buy-bust team revealed that they did not witness the alleged sale between the accused and the poseur buyer due to their distance from the area where the transaction took place, making their testimonies "unreliable in establishing the elements of illegal sale." [18]

Applying these in the present case, the Regional Trial Court and the Court of Appeals erred in giving credence to the uncorroborated testimony of the poseur buyer, Police Officer I Darelle Jed Delbo (PO1 Delbo). Based on his testimony, only he and the confidential informant were present during the transaction. The backup team was positioned approximately 10 to 15 meters away until PO1 Delbo gave the prearranged signal, prompting the team to run towards the vicinity.[19] In fact, the other police officers admitted to not having personally witnessed the transaction. Hence, the Regional Trial Court and the Court of Appeals wrongfully convicted Casa of illegal sale of dangerous drugs on the basis of an uncorroborated testimony that is unclear and lacking in details.[20]

On the other hand, in illegal possession of dangerous drugs, the prosecution must establish the presence of the following elements: (1) the accused is in possession of an item or object identified to be a prohibited or regulated drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the drug.[21] The actual or constructive possession of the dangerous drugs is controlling:

[T]he prosecution must prove that the accused had the intent to possess (*animus possidendi*) the drugs. Possession, under the law, includes not only actual possession, but also constructive possession. Actual possession exists when the drug is in the immediate physical possession or control of the accused. On the other hand, constructive possession exists when the drug is under the dominion and control of the accused or when he has the right to exercise dominion and control over the place where it is found. Exclusive possession or control is not necessary.[22] (Citations omitted)

Here, possession was not sufficiently established. To recall, Casa was charged with illegal possession of 10.99

grams of shabu packed in 11 heat-sealed plastic sachets.[23] According to PO1 Delbo's testimony, the sachets were inside a plastic container which he confiscated after arresting Casa.[24]

However, as pointed out by the ponencia, it is contrary to human logic for accused-appellant to hold the plastic container in the open after being made aware that she was in the presence of a police officer.[25] It is also highly irregular for PO1 Delbo to have already known that there were more sachets of shabu inside the plastic container even before opening it.[26] Lastly, the officer who conducted a search on accused-appellant after the arrest even confirmed that she "did not confiscate anything from the body of [Casa]."[27]

All in all, the prosecution's narration of the events during the confiscation of the prohibited drugs was highly doubtful, improbable, and inconsistent. Consequently, when the credibility of the transaction itself is put into question, the allegation of illegal possession of dangerous drugs is negated. Thus, the Court has no other option but to uphold the presumption of innocence in favor of the accused.

II

In addition to establishing the requisite elements, common to drugs cases is the necessity of presenting the corpus delicti before the court.[28] In order to satisfy the standard of proof beyond reasonable doubt, the identity and integrity of the dangerous drug must be established with moral certainty. This means that "the prosecution must be able to account for each link [in] the chain of custody from the moment the drugs are seized up to their presentation in court." [29]

Hence, Section 21 of Republic Act No. 9165, as amended by Republic Act No. 10640, comprehensively outlines the rules governing the custody and disposition of dangerous drugs:

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 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[.]

To prevent "tampering, substitution, and planting of evidence,"[30] strict adherence with Section 21 of Republic Act No. 9165, as amended, is necessary. Partial or approximate compliance is insufficient.[31] This has been the consistent direction of the Court in dealing with the noncompliance of the chain of custody rule.[32]

In particular, from 2010 to 2020, the Court has observed an increase in acquittals on the grounds of noncompliance with Section 21 from 22 to 290 cases.[33] Such a strict application of the rule is only appropriate due to the fungible nature of the corpus delicti in drugs cases.

In *Mallillin v. People*,[34] this Court stressed that:

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.[35]

Further, this Court highlights strict compliance with the chain of custody rule when the amount of dangerous drugs involved is minuscule.[36] For example, in *People v. Holgado*,[37] this Court was confronted with an appeal from a conviction for the illegal sale of 0.05 gram of shabu. The Court said:

Trial courts should meticulously consider the factual intricacies of cases involving violations of Republic Act No. 9165. All details that factor into an ostensibly uncomplicated and barefaced narrative must be scrupulously considered. Courts must employ heightened scrutiny, consistent with the requirement of proof beyond reasonable doubt, in evaluating cases involving min[u]scule amounts of drugs. These can be readily planted and tampered.[38] (Emphasis supplied)

Though the small amount of confiscated drugs is not in itself a "badge of innocence or a point justifying acquittal,"[39] this Court still stressed that law enforcers cannot feign ignorance of the exacting standards under Section 21 of Republic Act No. 9165, as amended, for they are required to know the laws they are charged to execute.[40] Further, failure to comply with the chain of custody rule is equivalent to failure to establish the corpus delicti, and therefore, failure to prove that the crime was indeed committed.[41]

Additionally, a survey[42] of the drugs cases that reach this Court reveals that most of them involve small quantities[43] of shabu [44] In particular, from 2010 to 2021, 1,348 appealed cases involve shabu while only 140 cases involve marijuana and 254 involve other or unspecified dangerous drugs.[45] Of the appealed cases for illegal sale and illegal possession of shabu, the median quantities involved are less than 1 gram.[46]

A table of summary of the median amounts for the quantity of shabu in appealed drugs cases disposed from 2010 to 2021 are as follows:[47]

Median

Shabu

Sale

Possession

Delivery/Transport

2021

0.0935

0.29

4.62

2020

0.078785

0.2092

0.19715

2019

0.07

0.18

18.4349

2018

0.04

0.07965

0.13

2017

0.0708

0.13

0.11

2016

0.05

0.15745

56.03055

2015

0.0635

0.15

0.03

2014

0.1

0.15

251840.15

2013

0.07

0.08

171.7

2012

0.1

0.23

2011

0.06

0.24

504.906

2010

0.12

0.17

0.1211

The same survey[48] has also summarized the amount in pesos of appealed drugs cases that reach the Supreme Court where the drugs involved were measured in price as follows:[49]

Year

Number of cases

where drugs

involved were

counted in PHP

Median amount in

PHP

Average amount in

PHP

2021

9

500.00

28653.33

2020

8

500.00

825.00

2019

6

300.00

316.70

2018

5

1000.00

2000.00

2017

5

100.00

200.00

2016

9

200.00

1288.89

2015

-

-

-

2014

6

200.00

283.33

2013

6

250.00

250.00

2012

-

-

-

2011

4

300.00

300.00

2010

1

200.00

266.67

From the foregoing, the data would collectively show that drug cases that reach the Supreme Court deal with minuscule amounts of shabu, both in weight and in price. This would readily show that prosecutions on drug cases over the past 10 years have been skewed against the end-users and seldom against those who are running drug syndicates and proverbial masterminds. Prosecution is thereby prejudicial against the vulnerable and the poor, while the "big fish"[50] get away. Ultimately then, prosecution fails to address the drug problem at its root.

The Court is not blind. The Judiciary, as guardians of the people's rights, cannot be instruments, even incidentally, to the reckless disregard of the rights of the underprivileged who are often victims of unjust and partial prosecution. This cannot be tolerated. Allowing anything less than strict compliance with the chain of custody rule would compromise their rights.

To illustrate, the presence of the insulating witnesses during the seizure, inventory, and photographing of the contraband would guarantee that the "items delivered to the investigating officer are the items which have actually been inventoried." [51] The law provides that these witnesses be required to sign the copies of the inventory and be given a copy thereof. [52] This requirement seeks to "avoid frame ups or wrongful arrests of persons suspected to be violators of the law." [53]

There is no reason for police officers not to secure the presence of the insulating witnesses prior to seizure and confiscation of the contraband in cases of arrests pursuant to a search warrant since there is sufficient interval between the issuance of the search warrant and its execution. In cases of warrantless arrests, there is likewise an

ample amount of time between the planning of a buy-bust operation and its implementation for them to comply with the required witnesses.

Further, while the amendment in Section 21 reduced the number of insulating witnesses from three to two,[54] this does not mean that their presence during seizure and inventory may be dispensed with. Had it been the intention of the amendatory law, Republic Act No. 10640, the requirement could have easily been deleted from the enumeration. Hence, the Court is bound to strictly comply with the letter of the law.

By extension, Section 21 also requires that the witnesses sign the inventory and be given copies. In the present case, however, the Inventory/Receipt of Property Seized lacked the signature of accused-appellant.[55] She was also missing from the photographs taken during the inventory.

The prosecution witnesses gave conflicting reasons for this matter. PO1 Delbo claimed that accused-appellant was not in the photographs "because she was avoiding the police officers;"[56] while PO1 Archimedes Olasiman (PO1 Olasiman) recounted that accused-appellant was "crying during the inventory and did not want to be seated with the insulating witnesses." [57] In addition to their conflicting testimonies, they failed to account for the reason why her signature was not in the inventory sheet.[58] As noted by the ponencia, even if accused-appellant refused to give her signature, the police officers could have easily indicated this, along with the reason thereof, in the inventory sheet.

Likewise, the requisite that the physical inventory and taking of photographs must be done immediately after the seizure and confiscation serves to account for the time frame within which custody of the contraband transfers from the accused to the apprehending officer.[59] As the ponencia aptly puts it, when this interval increases, the exhibit gathered becomes susceptible to contamination or tampering. It thus follows that the requirement must be accomplished in the place of seizure to satisfy the element of "immediacy."

As an exception, Section 21 adds that in case of warrantless arrests, inventory and photographing may be done at the nearest police station or office of the apprehending officer when circumstances are not practicable. Such impracticability must be justified by the police officers.

In *People v. Taglucop*,[60] this Court stated that police officers must be able to show that: "(1) [i]t is not practicable to conduct the same at the place of seizure; or (2) [t]he items seized are threatened by immediate or extreme danger at the place of seizure,"[61] to trigger the exception. Hollow excuses such as "the crowd [was] getting bigger,"[62] the area was "quite dangerous,"[63] or that "the buy-bust team felt unsafe"[64] do not justify the transfer of venue.

Moreover, the manner by which courts may allow concessions in light of an alleged impracticability of conducting the inventory and photographing at the place of arrest should always be hinged on at least three considerations: (a) the extent of planning and preparation that went into organizing the buy-bust operation;[65] (b) the amount of prohibited drugs confiscated;[66] and (c) the position of the accused in the organizational hierarchy of illicit drug trade.[67] Regarding the last consideration, emphasis is given to those who are higher in the hierarchy in order to effectively cripple the system of illicit drug trade in the country. As this Court previously stated, "small retailers are but low-lying fruits in an exceedingly vast network of drug cartels." [68]

In the present case, there is a glaring lack of justification for the transfer of venue of the inventory and photographing. According to the prosecution, the buy-bust team decided to conduct it at the police station citing "security purposes." [69] In addition, the prosecution failed to establish that the transfer of venue was even necessary. PO1 Delbo and PO1 Olasiman offered conflicting reasons: PO1 Delbo testified that the team recently lost a member, but failed to explain how this was connected to the buy-bust operation in question[70] while PO1

Olasiman testified that there were already "a lot of people in the area." [71] These deserve scant consideration as the exception in Section 21 cannot be predicated on baseless and inconsistent excuses.

III

Deviations from the chain of custody rule are also not sanctioned by the saving clause under Section 21(1). The provision states that the saving clause applies only when the following requisites are shown: (1) justifiable grounds for noncompliance; and (2) preservation of the integrity of the exhibit. None of these were established by the prosecution. Not only did the prosecution fail to validly give a justifiable ground for noncompliance, there were also numerous gaps in the chain of custody that casted doubt on the integrity of the contraband seized.

To prove that the integrity of the seized item has been preserved:

[T]he following links should be established in the chain of custody of the confiscated item: first, the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; second, the turnover of the illegal drug seized by the apprehending officer to the investigating officer; third, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and fourth, the turnover and submission of the marked illegal drug seized from the forensic chemist to the court. [72] (Citation omitted)

First, PO1 Delbo irregularly marked the seized items. Marking involves the "placing by the apprehending officer or the poseur[.]buyer of [their] initials and signature on the items seized." [73] In this case, the initials of the seizing officer were absent in the markings. [74] Additionally, as noted by the ponencia, the time and place of the buy-bust operation were also not indicated which is contrary to the rules of procedure of the Philippine National Police. [75]

Second, the circumstances surrounding the turnover of the seized item from the apprehending officer to the investigating officer and the subsequent turnover to the forensic chemist are also unclear. According to the prosecution, PO1 Delbo gave the items to PO3 Edilmar Manaban (PO3 Manaban) in a brown envelope. [76] PO3 Manaban then stored the envelope in his locker after checking the contents of the envelope and then resealed it. The next day, he submitted the envelope to Police Chief Inspector Josephine Llana (PC/Insp. Llana), the forensic chemist. [77] However, PO3 Manaban and PC/Insp. Llana, who have firsthand knowledge of what transpired during this interval, were not among the witnesses presented by the prosecution. Stipulations were only made as regards the transfer and handling of the seized items.

Though the parties are permitted to make stipulations to dispense with the forensic chemist's testimony, the stipulations made by the parties lack the vital information required in *People v. Cabuhay*: [78] "(1) that the forensic chemist received the seized article as marked, properly sealed, and intact; (2) that he [or she] resealed it after examination of the content; and (3) that he placed his own marking on the same to ensure that it could not be tampered with pending trial." [79] Absent these information, there is no assurance that the integrity of the exhibits has been preserved while they were in the custody of PC/Insp. Llana.

IV

The presumption of regularity in the performance of duties does not excuse noncompliance with Section 21. The premium placed by the Constitution on the right to be presumed innocent cannot be trumped by merely invoking the evidentiary rule of presumption of regularity. [80] When the evidence against the accused does not meet the standard of proof required in criminal cases, in no case can law enforcers seek shelter on the presumption to determine the guilt of the accused. [81] Therefore, noncompliance with Section 21, as amended, is a direct negation of the presumption of regularity. [82]

The right of the accused to be presumed innocent constrains the courts to carefully weigh the evidence presented

by the prosecution. Self-serving assurances and unjustified deviations from the chain of custody rule cast doubt as to the "origins of the [seized paraphernalia]"[83] which would warrant the acquittal of the accused.

With so many cases involving alleged violations of Republic Act No. 9165, it is regrettable that most cases that reach the Supreme Court are those of "small-time drug users and retailers." [84] Though these individuals form part of the drug problem, law enforcers and prosecutors are reminded that the law also aims to aid in the rehabilitation and re-integration of "individuals who have fallen victims to drug abuse or dangerous drug dependence." [85] With this in mind, I enjoin prosecutors to direct their efforts in uncovering the bigger persons behind the drug cartels plaguing our country. [86] Otherwise, our efforts in resolving these cases will be for naught.

Accordingly, I vote that the November 29, 2018 Decision of the Court of Appeals in CA-G.R. CR-HC No. 02574, affirming the March 28, 2017 Joint Judgment of the Regional Trial Court in Criminal Case Nos. 2015-23066 & 2015-23067, be REVERSED and SET ASIDE. Accused-appellant Ma. Del Pilar Rosario C. Casa must be ACQUITTED for failure of the prosecution to prove her guilt beyond reasonable doubt.

[1] *People v. Dela Cruz*, G.R. No. 229053, July 17, 2019 [Per J. Leonen, Third Division], citing *Lescano v. People*, 778 Phil. 460, 475 (2016) [Per J. Leonen, Second Division].

[2] Ponencia, p. 17.

[3] Republic Act No. 9165 (2002), sec. 21, as amended by Republic Act No. 10640 (2014).

[4] See *Pagal v. People*, G.R. No. 251894, March 2, 2022 [Per J. Leonen, Third Division].

[5] See *People v. Holgado*, 741 Phil. 78, 100 (2014) [Per J. Leonen, Third Division].

[6] *Id.*

[7] CONST., art. III, sec. 14(2).

[8] CONST., art. III, sec. 1.

[9] *People v. Belocura*, 693 Phil. 476, 503-504 (2012) [Per J. Bersamin, First Division], citing *Patula v. People*, 685 Phil. 376, 388 (2012) [Per J. Bersamin, First Division].

[10] *People v. Santos, Jr.*, 562 Phil. 458, 469-470 (2007) [Per J. Tinga, Second Division].

[11] *Id.* at 470.

[12] *People v. Honrada*, 281 Phil. 951, 959 (1991) [Per J. Medialdea, First Division].

[13] 298 Phil. 88 (1993) [Per J. Griño-Aquino, First Division].

[14] *Id.* at 91.

[15] 298 Phil. 88 (1993) [Per J. Griño-Aquino, First Division].

[16] *Id.* at 470.

[17] G.R. No. 206767, September 11, 2019 [Per J. Caguioa, Second Division].

[18] *Id.* at 6. This pinpoint citation refers to the copy of the Decision uploaded in the Supreme Court website.

[19] Ponencia, pp. 3-4, 10.

[20] Id. at 10.

[21] Pagal v. People, G.R. No. 251894, March 2, 2022 [Per J. Leonen, Third Division], p. 10, citing People v. Morales, 630 Phil. 215, 228 (2010) [Per J. Del Castillo, Second Division]. This pinpoint citation refers to the copy of the Decision uploaded in the Supreme Court website.

[22] People v. Tira, 474 Phil. 152, 173 (2004) [Per J. Callejo, Sr., En Banc].

[23] Ponencia, p. 2.

[24] Id. at 4.

[25] Id. at 11-12.

[26] Id. at 12.

[27] Id.

[28] People v. Abdulwahab, G.R. No. 242165, September 11, 2019 [Per J. Jardeleza, First Division], p. 5. This pinpoint citation refers to the copy of the Decision uploaded in the Supreme Court website.

[29] Id., citing Limbo v. People, G.R. No. 238299, July 1, 2019 [Per J. Perlas-Bernabe, Second Division].

[30] People v. Que, 824 Phil. 882, 901 (2018) [Per J. Leonen, Third Division].

[31] Id.

[32] Comparative Analysis of Supreme Court Caseload Statistics for Appealed Drugs Cases (2022) 4-5.

[33] Id. at 5.

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

[35] Id. at 588, citing Graham v. State, 255 N.E2d 652, 655.

[36] See Mallillin v. People, 576 Phil. 576, 588 (2008) [Per J. Tinga, Second Division]; People v. Dela Cruz, 744 Phil. 816, 820 (2014) [Per J. Leonen, Second Division]; People v. Sipin, 833 Phil. 67 (2018) [Per J. Peralta, Second Division]; People v. Malazo, G.R. No. 223713, January 7, 2019 [Per J. Carpio, Second Division]; People v. Ternida, G.R. No. 212626, June 3, 2019 [Per J. Leonen, Third Division]; Casilag v. People, G.R. No. 213523, March 18, 2021 [Per J. Caguioa, First Division]; People v. Pagaspas, G.R. No. 252029, November 15, 2021 [Per J. Leonen, Third Division]; and People v. Ortega G.R. No. 240224, February 23, 2022 [Per J. Hernando, Second Division].

[37] 741 Phil. 78 (2014) [Per J. Leonen, Third Division].

[38] Id. at 100.

[39] People v. Que, 824 Phil. 882, 914 (2018) [Per J. Leonen, Third Division].

[40] People v. Saragena, 817 Phil. 117 (2017) [Per J. Leonen, Third Division].

[41] Id. at 145.

[42] Comparative Analysis of Supreme Court Caseload Statistics for Appealed Drugs Cases (2022), 4-5.

[43] Id. at 8.

[44] Id. at 6.

[45] Id.

[46] Id. at 8.

[47] Id.

[48] Id. at 8-9.

[49] Id. at 9.

[50] *People v. Holgado*, 741 Phil. 78, 100 (2014) [Per J. Leonen, Third Division].

[51] *People v. Que*, 824 Phil. 882, 909 (2018) [Per J. Leonen, Third Division].

[52] Republic Act No. 9165 (2002), sec. 21, as amended by Republic Act No. 10640 (2014).

[53] *People v. Baluyot*, G.R. No. 243390, October 5, 2020 [Per J. Hernando, Second Division], p. 10. This pinpoint citation refers to the copy of the Decision uploaded in the Supreme Court website

[54] Section 21, Republic Act No. 9165, as amended by Republic Act No. 10640, only requires two witnesses: (1) an elected public official, and (2) a representative from the National Prosecution Service or the media.

[55] Ponencia, pp. 15-16.

[56] Id. at 33.

[57] Id.

[58] Id.

[59] *People v. Banding*, 859 Phil 837, 853-854 (2019) [Per J. Leonen, Third Division] citing *People v. Que*, 824 Phil. 882 (2018) [Per J. Leonen, Third Division].

[60] G.R. No. 243577, March 15, 2022 [Per J. Gesmundo, First Division].

[61] Id. at 14. This pinpoint citation refers to the copy of the Decision uploaded in the Supreme Court website.

[62] *People v. Salenga*, G.R. No 239903, September 11, 2019 [Per J. Jardeleza, First Division], p. 10. This pinpoint citation refers to the copy of the Decision uploaded in the Supreme Court website.

[63] *People v. Dumanjug*, G.R. No. 235468, July 1, 2019 [Per J. Caguioa, Second Division], p. 13. This refers to the pinpoint citation of the copy of the Decision uploaded in the Supreme Court website.

[64] *People v. Lim*, 839 Phil. 598, 624 (2018) [Per J. Peralta, En Banc].

[65] See *Pagal v. People*, G.R. No. 251894, March 2, 2022 [Per J. Leonen, Third Division].

[66] See *People v. Holgado*, 741 Phil. 78, 100 (2014) [Per J. Leonen, Third Division].

[67] Id.

[68] Id.

[69] Ponencia, p. 34.

[70] Id.

[71] Id.

[72] *People v. Nandi*, 639 Phil. 134, 144-145 (2010) [Per J. Mendoza, Second Division], citing *People v. Kamad*, 624 Phil. 289 (2010) [Per J. Brion, Second Division].

[73] *People v. Dahil*, 750 Phil. 212, 232 (2015) [Per J. Mendoza, Second Division].

[74] Ponencia, p. 35.

[75] *Id.* at 19-20.

[76] *Id.* at 4.

[77] *Id.* at 4-5.

[78] 836 Phil. 903 (2018) [Per J. Martires, Third Division].

[79] *Id.* at 918, citing *People v. Pajarin*, 654 Phil. 461, 466 (2011) [Per J. Abad, Second Division].

[80] *People v. Ordiz*, G.R. No. 206767, September 11, 2019 [Per J. Caguioa, Second Division], p. 12. This pinpoint citation refers to the copy of the Decision uploaded in the Supreme Court website; *People v. Andaya*, 745 Phil. 237, 250-251 (2014) [Per J. Bersamin, First Division]; *People v. Catalan*, 699 Phil. 603, 621 (2012) [Per J. Bersamin, First Division].

[81] *People v. Catalan*, 699 Phil. 603, 621 (2012) [Per J. Bersamin, First Division].

[82] *People v. Navarrete*, 665 Phil. 738, 748 (2011) [Per J. Carpio Morales, Third Division]; *People v. Ulat*, 674 Phil. 484, 500 (2011) [Per J. Leonardo-De Castro, First Division]; *People v. Ambrosio*, 471 Phil. 241, 250 (2004) [Per J. Austria-Martinez, Second Division]; and *People v. Tan*, 432 Phil. 171, 197 (2002) [Per J. Ynares-Santiago, First Division].

[83] *People v. Holgado*, 741 Phil. 78, 91 (2014) [Per J. Leonen, Third Division], citing *People v. Laxa*, 414 Phil. 156, 170 (2001) [Per J. Mendoza, Second Division]

[84] *Id.* at 100.

[85] Republic Act No. 9165 (2002), sec. 2, par. 3.

[86] *People v. Holgado*, 741 Phil. 78, 100 (2014) [Per J. Leonen, Third Division].

CONCURRING OPINION

CAGUIOA, J.:

The government's drive against illegal drugs deserves everybody's support. But it cannot be pursued by ignoble means which are violative of constitutional rights. It is precisely when the government's purposes are beneficent that we should be most on our guard to protect these rights. As Justice Brandeis warned long ago, "the greatest dangers to liberty lurk in insidious encroachment by men of zeal, well meaning but without understanding."^[1]

I concur in the acquittal of accused-appellant Ma. Del Pilar Rosario Casa from charges of violating Sections 5 and 11 of Republic Act No. (RA) 9165,^[2] as amended by RA 10640.^[3]

I submit this opinion if only to commend the ponencia's cogent approach to the strict requirements in the first link of the chain of custody, and to stress anew the general rule that the marking, inventory, and photographing of seized items must be made at the place of apprehension, with the mandatory witnesses already being at or near the

place of arrest. It is only if the police officers present a justifiable reason — such as when there is significant danger to the safety and security of the police officers, insulating witnesses, or the seized items — can the marking, inventory, and photographing of the seized items be done at the nearest police station.

The presumption of innocence vis-à-vis Section 21 of RA 9165

No less than the Constitution mandates that "[i]n all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved." [4] Thus, borrowing the words of the Court in *Republic v. Cayan*, [5] "[t]he presumption of innocence in favor of the accused is always the starting point." [6] "Thus, each accused, even those whose cases are already on appeal, can hide behind this constitutionally protected veil of innocence which only proof establishing guilt beyond reasonable doubt can pierce." [7]

The essence of this presumption is that "the accused need not even do anything to establish his innocence as it is already presumed." [8] In fact, the accused need not even present a single piece of evidence in his or her defense if the State has not discharged its onus. [9] In other words, the burden of proof in criminal cases never shifts — it is, and will always be, the prosecution's burden to establish guilt beyond reasonable doubt in each case. Applying the same principle in cases involving dangerous drugs, the Court has stated that:

In particular, in cases involving dangerous drugs, in order to hurdle the constitutional presumption of innocence, the prosecution has the burden to prove compliance with the chain of custody requirements under Section 21, Article II of RA 9165, to wit: (1) the seized items must be inventoried and photographed immediately after seizure or confiscation; (2) the physical inventory and photographing must be done in the presence of (a) the accused or his/her representative or counsel, (b) an elected public official, (c) a representative from the media, and (d) a representative from the Department of Justice (DOJ), all of whom shall be required to sign the copies of the inventory and be given a copy of the same; and (3) the seized drugs or drug paraphernalia must be turned over to a forensic laboratory within twenty-four (24) hours from confiscation for examination. [10]

The foregoing hurdles are anchored on Section 21, RA 9165, which provides the specific chain of custody procedure applicable to cases involving dangerous drugs.

While there are chain of custody requirements as well in other cases, chain of custody 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." [11] To the naked eye, it is difficult to distinguish a particular set of substances from another set of the same kind. Worse, it is even equally difficult to differentiate some narcotic substances from other legal and completely harmless objects, some of which are even considered household items (like sugar and salt). Thus, in the classification of object or real evidence, narcotics are considered "non-unique objects," as opposed to unique objects which have readily identifiable characteristics, like a gun which has a serial number.

Because narcotics are non-unique objects, the legislature saw it fit to establish a chain of custody rule that is specific to dangerous drugs cases. In *Mallillin v. People* [12] (*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." [13] As stated by the Court en banc in *People v. Lim* [14] (*Lim*):

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 with another or been contaminated or tampered with.[15]

While RA 9165 and subsequently RA 10640 were enacted to enhance the government's anti-drug campaign, the said intent does not affect, as it is not entirely relevant to, the fact that Section 21 is a specific, more stringent chain of custody procedure that is absent in the seizures of other items. Verily, enhancing the government's anti-drug campaign is not mutually exclusive with protecting the rights of innocent persons. To bolster this point, allow me to quote an excerpt from the Sponsorship Speech of Rep. Roque R. Ablan, Jr. for House Bill No. 4433, the precursor of RA 9165:

House Bill No. 4433 is a compilation of 22 bills filed by our colleagues in this House and we would want that this bill should (sic) be approved by our House. In favorably acting on this House Bill 4433, we begin our renewed fight against the illegal drug menace.

With this bill, we send the message "enough and no more" to brother Peter and Wellington Lim of Cebu and other druglords like them who accumulate wealth by destroying the moral fiber, the very soul and future of our people.

House Bill No. 4433, we provide better protection to our people against corrupt and soul-less politicians like Ronnie Mitra, the Mayor of Panukulan, Quezon, who disguise themselves as public servants but in reality are thieves who are even using government resources in the trafficking of illegal drugs.

With this bill, Mr. Speaker, we intend to decrease the number in your possession of drugs so that you will be unailable – from 200 grams to only five grams. Each gram can fetch you up five times, Mr. Speaker. That is why we are trying to lower it from 200 to five grams.

With the Dangerous Drugs Act of 2002, we arm our society against some unscrupulous police and military officials who betray our trust by protecting druglords and drug pushers, and worse, by recycling seized and confiscated illegal drugs, pushing these again to the streets, our homes and our schools, all for the price of 30 pieces of silver."[16] (Emphasis and underscoring supplied)

In sum, Section 21 is meant to ensure that the narcotic substance can be authenticated once brought to court. This means that Section 21 is the very tool by which courts could be assured that the narcotic substances before it: 1) are indeed considered dangerous drugs, and 2) are the very same items that were seized from the accused.

It is only when a court is assured that the drugs submitted to it are authentic can it rule that the presumption of innocence has been hurdled. As a result, "[j]urisprudence [has] consistently pronounce[d] that 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. As such, the presentation in court of the corpus delicti — the body or substance of the crime — establishes the fact that a crime has actually been committed."[17]

Considering that the main purposes of Section 21 are to ensure the origin of narcotic substances — which, to reiterate, are the corpus delicti of cases involving dangerous drugs — and that the same remains untainted until presentation in court, then it is through this lens that the entire provision must be viewed.

In light of its purpose, Section 21 requires immediacy

As mentioned, Section 21 outlines the specific chain of custody procedure in cases involving dangerous drugs. For ease of reference, the entire Section 21 of RA 9165, prior to the amendment through RA 10640, provides:

SECTION 21. Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant

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

(1)

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

(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 under oath by the forensic laboratory examiner, shall be issued within twenty-four (24) hours after the receipt of the subject item/s: Provided, That when the volume of the 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 on the completed forensic laboratory examination on the same within the next twenty-four (24) hours;

(4)

After the filing of the criminal case, the Court shall, within seventy-two (72) hours, conduct an ocular inspection of the confiscated, seized and/or surrendered dangerous drugs, plant sources of dangerous drugs, and controlled precursors and essential chemicals, including the instruments/paraphernalia and/or laboratory equipment, and through the PDEA shall within twenty- four (24) hours thereafter proceed with the destruction or burning of 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 DOJ, civil society groups and any elected public official. The Board shall draw up the guidelines on the manner of proper disposition and destruction of such item/s which shall be borne by the offender: Provided, That those item/s of lawful commerce, as determined by the Board, shall be donated, used or recycled for legitimate purposes: Provided, further, That a representative sample, duly weighed and recorded is retained;

(5)

The Board shall then issue a sworn certification as to the fact of destruction or burning of the subject item/s

which, together with the representative sample/s in the custody of the PDEA, shall be submitted to the court having jurisdiction over the case. In all instances, the representative sample/s shall be kept to a minimum quantity as determined by the Board;

(6)

The alleged offender or his/her representative or counsel shall be allowed to personally observe all of the above proceedings and his/her presence shall not constitute an admission of guilt. In case the said offender or accused refuses or fails to appoint a representative after due notice in writing to the accused or his/her counsel within seventy-two (72) hours before the actual burning or destruction of the evidence in question, the Secretary of Justice shall appoint a member of the public attorney's office to represent the former;

(7)

After the promulgation and judgment in the criminal case wherein the representative sample/s was presented as evidence in court, the trial prosecutor shall inform the Board of the final termination of the case and, in turn, shall request the court for leave to turn over the said representative sample/s to the PDEA for proper disposition and destruction within twenty-four (24) hours from receipt of the same; and

(8)

Transitory Provision: a) Within twenty-four (24) hours from the effectivity of this Act, dangerous drugs defined herein which are presently in possession of law enforcement agencies shall, with leave of court, be burned or destroyed, in the presence of representatives of the Court, DOJ, Department of Health (DOH) and the accused and/or his/her counsel, and, b) Pending the organization of the PDEA, the custody, disposition, and burning or destruction of seized/surrendered dangerous drugs provided under this Section shall be implemented by the DOH. (Emphasis and underscoring supplied)

It is clear from the foregoing that Section 21 covers the entire life cycle of a criminal case involving dangerous drugs — right from the initial contact with the accused to the destruction of the seized prohibited substances once judgment on the case has been promulgated. It is quite apparent that Section 21 is meticulously crafted, providing multiple steps — all geared towards ensuring that seized items reach the courts with their integrity and evidentiary value intact. Again, this is because the spirit that animates Section 21 is to assure the courts of the origin and integrity of the corpus delicti. This same animus anchors the requirement of immediacy in the conduct of marking and inventory, covered by the first paragraph of Section 21.

To recall, the first paragraph of Section 21, as well as its counterpart provision in the law's Implementing Rules and Regulations (IRR), requires the apprehending team having initial custody and control of the drugs to physically inventory and photograph 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] Thus, for the element of immediacy to be fulfilled, inventory and photographing would necessarily have to be conducted right then and there, or at the place of seizure and confiscation.

To reiterate, the element of immediacy is not a novel introduction by RA 10640. Section 21, even as originally spelled out in RA 9165, already required the conduct of the physical inventory and photographing "immediately after seizure and confiscation." This reveals the overarching principle regarding the conduct of inventory and photographing: prior to any sub-provwos or subsequent clarifications, the paramount condition is to ensure the

integrity — nay, the very existence — of the corpus delicti by immediately documenting the moment it supposedly leaves the accused's hands and subsequently falls under the control of the State. In other words, the immediate inventory and photographing is the general rule set by the law and its implementing rules.

It is easily perceivable why the law demands compliance with such a rule. Beyond debate, the most crucial portion of the chain of custody rule is the seizure and initial custody of the dangerous drugs. Without a valid and reliably conducted seizure, the entire chain crumbles. The beginning of the chain is likewise the most vulnerable stage, as it is here that the dangers of planting, switching, and contamination of evidence are most prevalent.

More than three decades after its promulgation, the Court's pronouncements in *People v. Ale*[19] on the reality behind dangerous drugs cases remain relevant:

x x x [W]e 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. 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.[20] (Emphasis and underscoring supplied)

The element of immediacy thus 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. Through the immediate conduct of inventory documented by photographs and the equally important presence of the insulating witnesses during said inventory, courts are not constrained to rely solely on the apprehending officers' mere declarations as to the events leading to an accused's apprehension. Stated differently, strict compliance with the immediate inventory and photographing requirement offers to the Court an independent and impartial source of evidence on the very facts of the case upon which the elements of the crime would be based, reinforced with a guarantee that there was little to no time for any pernicious interference to taint the chain.

Verily, the element of immediacy is grounded on this reality: as the time gap from the seizure of the dangerous drugs or paraphernalia to their inventory and photographing widens, the greater their vulnerability to contamination or to abuse becomes. To haphazardly sanction any delay in the conduct of inventory and photographing, whether the same be a 30-minute walk or a two-hour drive, effectively blinds the Court, for the same period, to the truth of what actually transpired in the supposed anti-drug operation.

The provisos introduced in the
IRR and incorporated in RA 10640

While the first paragraph of Section 21, RA 9165 only mentioned immediacy and the presence of the mandatory witnesses during the inventory, the IRR of the law introduced two provisos: first, with regard to the place of the conduct of the inventory, and second, the "saving clause," which prevents the invalidity of seizures even though there be some non-compliance with Section 21, as long as there are justifiable grounds therefor. The text of the first paragraph of Section 21 of the IRR provides:

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:

(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[.] (Underscoring supplied)

The two provisos were later on incorporated in the law itself when RA 9165 was amended through RA 10640.

The introduction of the provisos, however, did not change the basic requirement of the law. To reiterate, the first proviso deals with where inventory can be conducted, but the fundamental requirement of immediacy — anchored on the phrase "immediately after seizure and confiscation" present in the main provision, and unchanged by RA 10640 — refers to when inventory is conducted. In other words, the main provision and the first proviso deals with different things. The main provision pertains to the time element, i.e., immediately, while the first proviso deals with the permissible places to conduct the inventory.

The first proviso must thus be understood in the context of the main provision. In other words, the permissible places to conduct the inventory is circumscribed by the time element — the requirement of immediacy. Coming from the understanding that the overarching rule for inventory and photographing is that they must be done immediately, then the general rule must be that the inventory and photographing must be done at the place of arrest and seizure. The requirement of immediacy itself is inconsistent with giving law enforcement an option to delay inventory and photographing by choosing to conduct the same somewhere else other than the place of arrest. By the natural course of things, the transfer to another place, whether the nearest police station or the nearest office of the apprehending team, would entail a certain lapse of time, which would generally defeat the overarching requirement of immediacy.

Transferring to the nearest police station or office of the apprehending team for inventory, therefore, should be done only when the general rule cannot practicably be complied with. Resort to the nearest police station or office is the exception, not a mere alternative at the option or convenience of the police officers.

Buy-bust operations, as planned activities, should generally be subject to the same expectations as arrests pursuant to a warrant

I am cognizant that the first proviso of Section 21 distinguishes between seizures pursuant to a search warrant, on the one hand, and warrantless seizures, on the other.[21] The venue of physical inventory is qualified that (a) where the search is pursuant to a warrant, at the place where the warrant is served; and (b) in case of warrantless seizures, at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable.[22] It is understandable that the law allows the conduct of inventory at the nearest police station or office of the apprehending team in the context of warrantless seizures because, after all, these are arrests that are spontaneous in nature. Indeed, the allowable instances of warrantless seizures mostly contemplate situations where a law enforcement agent is tasked to act quickly and in-the-moment, which would likely mean that all that

is necessary in effectuating an arrest under normal circumstances are not exactly prepared. The said rationale present in these of warrantless arrest, however, is absent in buy-bust operations.

The Court has oft highlighted the nature of a buy-bust operation as a pre-arranged activity,[23] often involving prior surveillance and investigation. Buy-busts are not spontaneous warrantless seizures; an entrapment precisely means that the buy-bust team comes to the site anticipating an arrest, just as if it was serving a warrant. Neither should the Court ignore the fact that in buy-bust operations, there would not even be any sale transaction if it were not orchestrated beforehand by the police, with or even without the help of confidential informants. It is with this recognition of the exceptional nature of buy-bust operations that the immediacy requirement should be interpreted.

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.[24] Considering their peculiar nature, courts must, therefore, put most buy-bust operations on the same plane as arrests pursuant to a warrant. After all, as discussed, both of them involve preparation, and law enforcement agents arrive at the scene already anticipating to make an arrest.

Consistent with the above-discussed overarching rule for inventory and photographing — i.e., that they must be done immediately and hence, at the place of arrest and seizure — then transferring to the nearest police station or office of the apprehending team for inventory, even in apprehensions resulting from buy-bust operations, should be done only when the general rule cannot practicably be complied with.

In any event, the plain language of Section 21 of RA 9165, its IRR, and RA 10640 requires that the inventory and photographing be done immediately after the seizure, regardless of the mode thereof. Simply put, the requirement of immediacy is not dispensed with only because the seizure is made through a warrantless arrest or buy-bust operation.

Thus, I am of the view that the requirement of immediacy should by no means be relaxed in buy-bust operations. There is simply no substantial distinction between the implementation of a search warrant on the one hand, and the conduct of a buy-bust operation on the other, to warrant a disparate treatment as to the place of inventory and photographing. Both being pre-arranged activities, the enforcement authorities would easily have enough time and opportunity to make the necessary preparations to conduct the inventory and photographing "without moving or altering [the] original position"[25] of the seized items, that is, at the place of apprehension. Thus, the buy-bust team should not simply be sanctioned to choose, at its convenience, to conduct the inventory at the nearest police station or at the nearest office of the apprehending officer or team.

Allow me to illustrate, with actual cases, the dangers of granting law enforcers such a wide latitude of discretion.

In *Dela Riva v. People*,[26] the buy-bust operation occurred in Subic, Zambales but the inventory and photographing of the seized drugs were conducted only at the PDEA National Headquarters in Quezon City, the office of the arresting team. In another case, *People v. Dela Rosa*,[27] the buy-bust team conducted the physical inventory and the taking of the photographs of the confiscated drug 54 kilometers from the place of seizure on the basis of their "team leader's discretion"[28] and to avoid commotion at the place of seizure. These two cases expose, to the highest level of absurdity, how the evils sought to be eradicated by Section 21 can instead proliferate if the strict language on inventory and photographing "immediately after seizure and confiscation" is curtailed by leniency when applied to warrantless seizures.

Legislative intent is to carve out

narrow exceptions to the
general rule that inventory
should be conducted at place of
seizure

The primacy of conducting the inventory and photographing at the place of arrest or seizure, regardless of the mode thereof, likewise finds support directly from submissions of the lawmakers who introduced the amendments to RA 9165.

Congressional deliberations on the enactment of RA 10640 reveal that "whichever is practicable" does not refer to the choice of law enforcers between "the nearest police station" or "the nearest office of the apprehending team." Rather, this phrase refers to a situation wherein conducting the inventory at the place of arrest endangers the security of the police officers, witness, or the seized items. This was in fact acknowledged by the Court in *Lim* where the Court quoted the Co- sponsorship Speech of Senator Vicente C. Sotto III:

Similarly, Senator Vicente C. Sotto III manifested that in view of the substantial number of acquittals in drug-related cases due to the varying interpretations of the prosecutors and the judges on Section 21 of R.A. No. 9165, there is a need for "certain adjustments so that we can plug the loopholes in our existing law" and "ensure [its] standard implementation." In his Co-sponsorship Speech, he noted:

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 photograph of seized illegal drugs.

x x x x

Section 21(a) of RA 9165 needs 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 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 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.[29] (Citations omitted; emphasis and underscoring supplied)

The foregoing portions of the Congressional deliberations are quite telling on what is meant by the "whichever is practicable" qualification in the first proviso of Section 21. It is not a mere option for the police depending on their convenience. Rather, it is an alternative made available to them by law but only when the conduct of inventory and photographing at the place of arrest would place the police officers, their witnesses, the accused, or the dangerous drugs — to borrow Senator Sotto III's words — in extreme danger arising from an immediate retaliatory action of drug syndicates. This is no casual justification. Not every buy-bust or arrest involving illegal drugs would attract the attention of drug syndicates, such that they would be waiting in the wings to ambush the buy-bust teams. The Court could only conclude that the team was in such a dangerous situation if the police and the prosecution could sufficiently establish the same as fact.

Thus, the Court en banc ruled in *Lim* that:

the immediate physical inventory and photographing 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.[30]

Consistent with *Lim*, and as reiterated in the ponencia,[31] prevailing jurisprudence confirms that even in warrantless seizures, "the general rule remains that the inventory and taking of photographs must be conducted in the place of seizure." [32] Only in narrow exceptional circumstances, and subject to the prosecution sufficiently establishing the same, can inventory and photographing in the alternative venues under Section 21 be justified.

The mandatory witnesses
should be at or near the time
and place of apprehension

Undoubtedly, the requirement of the presence of the witnesses is inseparable from the requirement of physical inventory and photographing at the place of seizure. Stated differently, since the physical inventory and photographing of the seized items must, as a general rule, be done at the place of seizure, it follows that the insulating witnesses whose presence is required during the inventory and photographing must also be in or within the area of the site of seizure.[33]

The reason behind this is simple: the presence of the required witnesses is most needed at the time of seizure and confiscation — it is their presence at this moment that would belie any doubt as to the source, identity, and integrity of the confiscated drug.[34] There is a reason why they are called insulating witnesses, and that is, their presence during the seizure, marking, inventory, and photographing of the dangerous drugs insulates the accused from the evils of switching, planting, or contamination of the corpus delicti.[35] Using the language of the Court in *People v. Mendoza*, [36] as relied upon in a long line of cases:[37]

Without the insulating presence of the representative from the media or the Department of Justice, or any elected public official during the seizure and marking of the sachets of shabu, the evils of switching, "planting" or contamination of the evidence that had tainted the buy-busts conducted under the regime of RA No. 6425 (Dangerous Drugs Act of 1972) again reared their ugly heads as to negate the integrity and credibility of the seizure and confiscation of the sachets of shabu that were evidence herein of the corpus delicti, and thus adversely affected the trustworthiness of the incrimination of the accused.[38] (Emphasis supplied)

Clearly, compliance with this most fundamental requirement — the presence of insulating witnesses — curbs, if not altogether forecloses, the pernicious practice of planting evidence.

In this connection, I emphasize that the insulating presence of the witnesses should also be attended by a time element. Again, the most crucial point in the chain of custody is the moment the accused loses control over the corpus delicti in favor of the mighty hands of the State. Thus, it is at the inception of the chain wherein it becomes most necessary for impartial eyes to affirm to the Court that, indeed, dangerous drugs were obtained from the accused. Stated differently, the element of immediacy which, as a general rule, necessitates the conduct of the inventory and photographing at the place of arrest and seizure, likewise demands the presence of the mandatory witnesses at or near the place of arrest. As aptly explained by the Court in *People v. Castillo*: [39]

"The requirement of conducting inventory and taking of photographs immediately after seizure and confiscation necessarily means that the required witnesses must also be present during the seizure and confiscation." The presence of third-party witnesses is not an empty formality in the conduct of buy-bust operations. It is not a mere rubberstamp to validate the actions taken and self-serving assurances proffered by

law enforcement officers. Far from a passive gesture, the attendance of third-party witnesses ensures the identity, origin, and integrity of the items seized.[40] (Citation omitted; emphasis and underscoring supplied)

Indeed, the belated participation of third-party witnesses much after the arrest and seizure as when they are merely "called in" after the buy-bust, does not achieve the purpose of the law in having these witnesses prevent or insulate against the planting of drugs.[41] In this scenario, the identity and origin of the item being inventoried in their presence is put into question precisely because the witnesses are blind to the most vital information: whether the seized items were actually confiscated from the accused. Surely, the law did not intend for the mandatory witnesses to only go through the motions of Section 21.

In order to fully breathe life to the legislative intent of bolstering the regularity of the operation and chain of custody of seized drugs through the presence of disinterested parties, I submit that to be able to bear witness to the inventory and photographing of the seized items immediately after the seizure and confiscation, the mandatory witnesses should correspondingly be at or near the time and place of seizure and apprehension.

Failure of police officers to
comply with their own
operational procedures
precludes the operation of the
saving clause in Section 21

It had been suggested during the deliberations that the failure to mark the seized items with the initials of the seizing officers as instructed in the PNP AIDSOTF-Manual is not fatal to the prosecution's case.

In this regard, the ponencia has thus correctly clarified that the irregularity in the marking of the items allegedly recovered from the accused creates doubt in the integrity foreclosing the invocation of the second proviso, or the "saving clause", in Section 21:

x x x [W]hile the chain of custody has been a critical issue leading to acquittals in drug cases, the Court has nevertheless held that noncompliance with the prescribed procedures does not necessarily result in the conclusion that the identity of the seized drugs has been compromised so that an acquittal should follow. Accordingly, before the prosecution can invoke the saving clause, they must satisfy the two requisites: (1) the existence of "justifiable grounds" allowing departure from the rule on strict compliance; and (2) the integrity and the evidentiary value of the seized items are properly preserved by the apprehending team.

x x x x

x x x [T]he second requisite of the saving clause was not proven by the prosecution x x x.

x x x x

As to the first link, the marking of the plastic sachets allegedly recovered from the appellant was irregularly done. It was not compliant with paragraph 2.35, Section 2-6 of the [PNP AIDSOTF-Manual.]

x x x x

x x x [W]hile the [PNP AIDSOTF-Manual] is not the absolute and controlling requirement for the conduct of the first link under Sec. 21 (1) of R.A. No. 9165, as amended, non-compliance thereof still contributes to the uncertainties on whether the marking was properly done by the officers involved. Evidently, such uncertainties thicken the cloud of doubt surrounding the integrity and evidentiary value of the seized items. [42]

As the Court has repeatedly stressed, a buy-bust is a planned operation, and given that the PNP AIDSOTF-Manual itself expressly provides its application to all PNP members and its Anti-Illegal Drugs Units in

all levels[43] on procedures that must be observed in the course of anti-illegal drugs operations and investigation,[44] it strains credulity why the buy-bust team could not have at least marked the seized items according to the procedures in their own operations manual.

To this end, it is my view that the police authorities' failure to observe their own internal procedures precludes: (1) the operation of the saving clause, and (2) the appreciation of the presumption of regularity.

In this connection, I wish to stress that judicial reliance on the presumption of regularity in the performance of official duty despite the lapses in the procedures undertaken by the buy-bust team is fundamentally unsound because the lapses themselves are affirmative proofs of irregularity. Moreover, courts would be remiss in fulfilling their duties if gaps in the chain of custody were filled through such presumption of regularity. In several cases,[45] the Court has repeatedly emphasized that the presumption of regularity in the performance of duty cannot overcome the stronger presumption of innocence in favor of the accused. Otherwise, a mere rule of evidence will defeat the constitutionally enshrined right to be presumed innocent. Indeed, borrowing the words of the Court in *People v. Coreche*[46] (*Coreche*), the presumption of regularity is "inferior to the constitutional presumption of innocence." [47]

Immediate marking is not
sufficient, as the law requires
immediate inventory

It has been opined, in the deliberations in this case and in other cases involving dangerous drugs, that the process of marking already constitutes a sufficient safeguard against the evils of planting, switching, and contamination of evidence, such that there is no need to be strict on where the inventory is to be conducted.

The argument makes an undue distinction between marking and inventory where there is none.

Marking, as a process that is part of the chain of custody procedure, traces its roots not in statute but through jurisprudence. To quote once again the Court in *Coreche*:

Long before Congress passed RA 9165, this Court has consistently held that failure of the authorities to immediately mark the seized drugs raises reasonable doubt on the authenticity of the corpus delicti and suffices to rebut the presumption of regularity in the performance of official duties, the doctrinal fallback of every drug-related prosecution. Thus, in *People v. Laxa* and *People v. Casimiro*, we held that the failure to mark the drugs immediately after they were seized from the accused casts doubt on the prosecution evidence, warranting acquittal on reasonable doubt. These rulings are refinements of our holdings in *People v. Mapa* and *People v. Dismuke* that [doubt] on the authenticity of the drug specimen occasioned by the prosecution's failure to prove that the evidence submitted for chemical analysis is the same as the one seized from the accused suffice to warrant acquittal on reasonable doubt.[48] (Emphasis supplied)

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, obviating switching, 'planting', or contamination of evidence." [49] The Court considers marking as "the starting point in the custodial link, thus it is vital that the seized contraband are immediately marked because succeeding handlers of the specimens will use the markings as reference." [50]

Marking, however, "is an indispensable aspect of the physical inventory process x x x as it establishes the link between the specimen seized during the buy-bust operation and the specimen that is examined and later presented as evidence during the trial." [51] Marking is an integral part of the inventory process; these processes are not divorced events that occur separately from each other. Creating a dichotomy between the two would defeat the very purpose for their existence which, to recall, is to ensure that the specimen submitted to court is the same one

as that has been allegedly seized from the accused.

To illustrate, consider a scenario where the supposed buy-bust operation was fictitious, and the main evidence against the individual was merely planted at the time of the "arrest." If marking and inventory were separate events, then agents of the State could put markings on the planted evidence at the place of apprehension, bring the innocent person to the nearest police station for the inventory, and the insulating witnesses who would witness the inventory would not know any better. The insulating witnesses would only be able to see the confiscated drugs which already contain the markings, but they would have absolutely no way of knowing or verifying that the seized item was indeed confiscated from the individual. The inventory spells out with specificity all the items seized from the accused. Without it, the insulating witnesses would have no personal knowledge of the circumstances as to the origins of the seized item, and their roles would be transformed to being ministerial in character — reduced to being witnesses to the marks on the seized items as well as their weight, without knowing fully well if indeed they came from the individual arrested.

Simply, physical inventory involves a listing of all items seized from the accused, and the designation or description of each item in such a manner as to make each item distinct or identifiable from others. Marking each item is thus indispensable if the integrity and specificity of each item seized from the accused is to be preserved. There can be no credible inventory without proper marking. The inventory necessarily includes the markings made on each item so that one-to-one correspondence between the items seized and those listed in the inventory can be achieved; and as expressly required by law, taking of photographs of all the items as marked completes the process of inventory and marking.

The insulating witnesses would, therefore, achieve no insulation against planting. Instead of protecting the individual citizen against the pernicious practice of planting, the presence of the insulating witnesses called in to the police station after the arrest, seizure, and marking of the evidence would instead validate and give credibility to evidence that has already been planted.

In other words, if marking and inventory were separate events, then their very existence would be rendered meaningless. Instead of eliminating the practice of planting evidence, marking, inventory, and the entire Section 21 would then serve to legitimize and/or deodorize it, contrary to the original intention of the law.

The scenario I put forth is not new or even far-fetched. As previously mentioned, as early as 1986 in the case of *Ale*, the Court had already taken judicial notice of the reality that "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." [52] In a 1993 case, where the Court found that the accused was a mere "palit-ulo," the Court bewailed:

The evident falsehood spread on the records before Us creates a nagging doubt on the culpability of the accused-appellant. It is sad to state that many innocent people become victims of physical violence and/or harassment from police officers who are supposed to be the protectors of the citizenry. We cannot condone such practices to continue in a civilized society.

While this Court commends the efforts of law enforcement agencies who are engaged in the difficult and dangerous task of apprehending and prosecuting drug-traffickers, it cannot, however, close its eyes nor ignore the many reports of false arrests of innocent persons for extortion purposes and blackmail, or to satisfy some hidden personal resentment of the "informer" or law enforcer against the accused. Courts should be vigilant and alert to recognize trumped up drug charges lest an innocent man, on the basis of planted evidence, be made to suffer the unusually severe penalties for drug offenses. [53] (Emphasis and underscoring supplied)

The magnitude of the current government's anti-drug campaign necessarily makes it more prone to abuse by law enforcers. Indeed, reports of alleged abuses and atrocities in the course of the anti-drug campaign have been surfacing in recent years. In *Lopena v. People*,^[54] through Justice Leonen, the Court had noted, without giving credence, contemporary reports of the reckless manner by which drug lists of police officers are drawn and the violence they instigate, which makes more critical caution in appreciating such evidence, thus:

Without any effort on the part of the police officers to disclose and explain their concrete premises, this Court is hard put to believe that their findings were of particularly exemplary quality as to be on par with the "independent police work" referenced in *Illinois*. This Court would be quite gullible to believe that mere inclusion in a watch list ipso facto equates to probable cause. This Court is not deaf to contemporary reports of how drug watch lists have been drawn rather recklessly, with bloody, fatal results.

To be clear, in referencing these reports, this Court does not mean to casually lend unqualified veracity to reports critical of law enforcers' efforts. What they underscore, nevertheless, is the need for this Court to tread carefully in lending approbation to one such watch list, especially when the police officers who harp on its worth have themselves been unable to specify the bases, findings, and other incidents of petitioner's inclusion in that list. Again, it is quite evidently self-serving for police officers to have this Court believe that there was probable cause (i.e., "circumstances sufficiently strong in themselves") just because they themselves wrote a suspect's name into their own list.^[55]

Worse, the Court is definitely not unaware of news reports that fake buy-busts are resorted to by law enforcement agencies. Just this year, PDEA agents were declared to be guilty of indirect contempt after they were caught in closed-circuit television (CCTV) to have staged a buy-bust operation.^[56] The CCTV footage showed that the agents arrested alleged drug suspects in separate places, instead of conducting a single buy-bust operation unlike what they initially alleged. More recently, another instance of a fake buy-bust situation — this time involving members of the PNP — even had deadly consequences.^[57] Six people, who were allegedly just passers-by near the area where the "buy-bust operation" was being conducted were arrested, blindfolded, hand-tied, and later on killed.

Indeed, the Court cannot anymore turn a blind eye to the realities of tampering, planting, frame-up, and extortion conducted by law enforcers, especially during the most recent administration's campaign against illegal drugs, the intensity of which was unmatched in the country's contemporary history. Hence, the need for greater prudence and stricter implementation of Section 21 which, at the risk of being repetitive, is aimed precisely to protect the accused from malicious imputations of guilt by abusive police officers.

Applying the foregoing principle to the first link of chain of custody, the processes of marking and inventory are therefore two parts of a whole. Marking and inventory are inextricably linked to each other and, in the context of buy-bust operations, must happen simultaneously. If one were to occur without the other, both would respectively be meaningless exercises in that neither would serve the purpose for which each is implemented. The concept of "marking without inventory" at the place of arrest, in the context of buy-bust operations, would only serve to further, instead of deter, the practices sought to be prevented by Section 21.

At this juncture, I would like to commend the ponencia for not shirking from its role of interpreting the law, always with a careful consideration of its minimum burden: to prevent a result that is manifestly unjust.

On top of the language of the law and the intent of Congress, the Court's interpretation of laws should not be divorced from the realities on the ground — sacred liberties protected by our Constitution, actual people's lives, hang in the balance.

As Justice Holmes noted, there is no such principle "against using common sense in construing laws."^[58] To

interpret that performing the elements of the first link in the chain of custody at the nearest police station or at the office of the apprehending law enforcers is a readily available option for our police officers, a choice they can always freely take, demolishes the very foundation of the chain of custody rule — as it will always be, in almost every instance, more practicable for police officers to conduct the marking, inventory, and photographing of the seized items at the police station. Sanctioning this kind of delay by interpreting the law as giving the police officers an unfettered choice, without any attempt to demand justification, makes inventory and photographing an exercise in futility. At its core, this interpretation effectively tilts the scale in favor of unbridled discretion over the protection of our citizens' constitutional rights.

Accordingly, I concur in the ponencia that the general rule is that the physical inventory and photographing of seized drugs must be conducted at the place of apprehension, regardless of the mode of seizure.

Establishing the identity, and
preserving the integrity, of the
seized items are the primordial
considerations in all links in
the chain of custody

The question had also been raised as to whether there is a need to modify the doctrine in *People v. Ubungen*[59] (*Ubungen*) relative to the minimum stipulations before the testimony of the forensic chemist may be dispensed with, i.e., that it:

should be stipulated that the forensic chemist would have testified that he took the precautionary steps required in order to preserve the integrity and evidentiary value of the seized item, thus: (1) that the forensic chemist received the seized article as marked, properly sealed, and intact; (2) that he resealed it after examination of the content; and (3) that he placed his own marking on the same to ensure that it could not be tampered pending trial." [60]

To this end, an opinion has been advanced that the foregoing stipulations are not exclusive in ensuring the integrity and evidentiary value of the corpus delicti and therefore, the Court should not mechanically apply the doctrine such that failure to stipulate on one "required" matter would warrant the acquittal of the accused.

I disagree with this position.

The stipulations enumerated in *Ubungen* find their basis in the case of *People v. Pajarin*, [61] where the Court held:

Further, as a rule, the police chemist who examines a seized substance should ordinarily testify that he received the seized article as marked, properly sealed and intact; that he resealed it after examination of the content; and that he placed his own marking on the same to ensure that it could not be tampered pending trial. In case the parties stipulate to dispense with the attendance of the police chemist, they should stipulate that the latter would have testified that he took the precautionary steps mentioned. [62] (Emphasis and underscoring supplied)

As can be gleaned from the foregoing, the "minimum stipulations" were intended to cover such precautionary steps that a forensic chemist would ordinarily testify on to establish that the integrity and evidentiary value of the corpus delicti have been preserved from its receipt from the investigating officer and prior to its presentation before the courts.

Clearly, therefore, failure to establish these basic measures casts doubt as to the integrity and identity of the item seized as it enters the third and fourth links in the chain.

I further submit that the import of these stipulations should be read along with the instruction in *Ubungen* that the

testimony, or the stipulations as to the testimony, of the forensic chemist should include "the management, storage, and preservation of the illegal drug allegedly seized x x x after its qualitative examination"[63] to reasonably establish the fourth link in the chain of custody. This is in keeping with the overarching authentication requirements enunciated in *Mallillin*:

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. [64] (Citations omitted; emphasis and underscoring supplied)

The minimum stipulations in *Ubungen* thus serve to preliminarily establish that the forensic chemist indeed properly received, managed, stored, and preserved the seized items.

To this end, I caution that the requirements in *Ubungen* are by no means exhaustive. Certainly, that the seized drugs were sealed when received, and re-sealed and marked by the forensic chemist after examination, are not conclusive of the lack of a break in the third and/or fourth links. Instead, the stipulations in *Ubungen* assist the courts in easily detecting whether a break in the chain exists for failure of the prosecution to establish compliance with the most basic measures to preserve the integrity of the corpus delicti.

All told, in every link in the chain of custody, establishing the identity, and ensuring the preservation of the integrity and evidentiary value of the corpus delicti are the primordial considerations. It is with this strict lens that every requirement set forth in RA 9165, its amendment, its IRR, and every act of the State in furtherance thereto, should be examined.

Based on the foregoing, I join the ponencia and take this opportunity to reiterate my firm position that the correct way to view the requirements set by Section 21 is that, as a general rule, the marking, as well as the inventory and photographing of seized drugs, must be made immediately at the place of seizure and confiscation, with the insulating witnesses already being at or near the place of arrest.

[1] *People v. Laxa*, 414 Phil. 156, 170-171 (2001).

[2] AN ACT INSTITUTING THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002, REPEALING REPUBLIC ACT NO. 6425, OTHERWISE KNOWN AS THE DANGEROUS DRUGS ACT OF 1972, AS AMENDED, PROVIDING FUNDS THEREFOR, AND FOR OTHER PURPOSES, approved June 7, 2002.

[3] AN ACT TO FURTHER STRENGTHEN THE ANTI-DRUG CAMPAIGN OF THE GOVERNMENT, AMENDING FOR THE PURPOSE SECTION 21 OF REPUBLIC ACT NO. 9165, OTHERWISE KNOWN AS THE "COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002," approved July 15, 2014.

[4] CONSTITUTION, Art. III, Sec. 14(2).

[5] 820 Phil. 452 (2017).

[6] *Id.* at 476.

[7] *Polangcos v. People*, G.R. No. 239866, September 11, 2019, 919 SCRA 324, 340.

[8] Id.

[9] *People v. Malana*, 844 Phil. 988, 1008 (2018).

[10] *Cuico v. People*, G.R. No. 232293, December 9, 2020, accessed at <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/67047>>.

[11] *Mallillin v. People*, 576 Phil. 576 (2008).

[12] Id.

[13] Id. at 589.

[14] 839 Phil. 598 (2018).

[15] Id. at 614-615.

[16] Minutes of the Plenary Session dated March 6, 2022, pp. 17-18.

[17] *People v. Remigio*, 700 Phil. 452, 464 (2012).

[18] Immediately, BLACK'S LAW DICTIONARY (Revised 4th ed. 1968), p. 884.

[19] 229 Phil. 81 (1986).

[20] Id. at 87-88.

[21] The relevant portion of RA 9165, Sec. 21, as amended by RA 10640, Sec. 1 reads:

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: 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[.]

[22] Id.

[23] See *People v. Ortega*, G.R. No. 240224, February 23, 2022, accessed at <<https://sc.judiciary.gov.ph/27255/>>; *People v. Luminda*, G.R. No. 229661, November 20, 2019, 925 SCRA 609; *People v. Salenga*, G.R. No. 239903, September 11, 2019, 919 SCRA 342; and *People v. Silayan*, G.R. No. 229362, June 19, 2019, 905 SCRA 349.

[24] Id.

[25] *People v. Lim*, supra note 14, at 668-669.

[26] 769 Phil. 872 (2015).

[27] 822 Phil. 885 (2017).

[28] Id. at 903.

[29] *People v. Lim*, supra note 14, at 618-619.

[30] Id. at 620.

[31] See ponencia, pp. 16-20.

[32] Id. at 16.

[33] Tañamor v. People, G.R. No. 228132, March 11, 2020, accessed at <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/66109>>.

[34] Barayuga v. People, G.R. No. 248382, July 28, 2020, accessed at <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/66495>>, citing People v. Escaran, G.R. No. 212170, June 19, 2019 905 SCRA 86, 103.

[35] Id.

[36] 736 Phil. 749 (2014).

[37] See People v. Calleja, G.R. No. 250865, June 16, 2021, accessed at <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/67697>>; People v. Baluyot, G.R. No. 243390, October 5, 2020, accessed at <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/66803>>; People v. Royol, G.R. No. 224297, February 13, 2019, 893 SCRA 54, 71-72; and People v. Año, 828 Phil. 439, 448-449 (2018).

[38] People v. Mendoza, supra note 36, at 764.

[39] G.R. No. 238339, August 7, 2019, 912 SCRA 493.

[40] Id. at 498.

[41] People v. Bangcola, G.R. No. 237802, March 18, 2019, accessed at <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65196>>, citing People v. Tomawis, 830 Phil. 385, 409 (2018).

[42] Ponencia, p. 23.

[43] PNP AIDSOTF-Manual, Section 1-1, par. 1.5.

[44] Id. at Introduction, par. 1.1.

[45] People v. Baraguna, G.R. No. 252137, August 4, 2021 (Unsigned Resolution); People v. Verbo, G.R. No. 243587, April 28, 2021 (Unsigned Resolution); People v. Soriano, G.R. No. 242828, February 10, 2021 (Unsigned Resolution); People v. Fulinara, G.R. No. 237975, June 19, 2019, 905 SCRA 448, 493-494; People v. Claudel, G.R. No. 219852, April 3, 2019, accessed at <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65135>>; People v. Espejo, G.R. No. 240914, March 13, 2019, 897 SCRA 205, 228; People v. Malana, 844 Phil. 988, 1004 (2018); People v. Rivera, 843 Phil. 256, 284 (2018); People v. Andaya, 745 Phil. 237, 247 (2014).

[46] 612 Phil. 1238 (2009).

[47] Id. at 1252.

[48] Id. at 1245-1246.

[49] Id. at 1245.

[50] Id.

[51] People v. Sarabia, G.R. No. 243190, August 28, 2019, 916 SCRA 377, 406 (2019). Emphasis and underscoring supplied.

[52] People v. Ale, supra note 19, at 87-88.

[53] *People v. Mapa*, 292-A Phil. 811, 821-822 (1993).

[54] G.R. No. 234317, May 10, 2021, accessed at <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/67392>>.

[55] *Id.*

[56] 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>>.

[57] Mike Navallo, 7 Bulacan cops in fake 'buy-bust' face murder charges, ABS-CBN NEWS, accessed at <<https://news.abs-cbn.com/news/08/31/21/7-bulacan-cops-in-fake-buy-bust-face-murder-charges>>.

[58] *Philippine American Life Insurance Co. v. Santamaria*, 142 Phil. 687, 694 (1970).

[59] 836 Phil. 888 (2018).

[60] *Id.* at 901.

[61] 654 Phil. 461 (2011).

[62] *Id.* at 466.

[63] *Supra* note 60, at 902

[64] *Mallillin v. People*, *supra* note 11, at 587.

CONCURRING OPINION

LOPEZ, M., J.:

The ponencia acquitted accused-appellant Ma. Del Pilar Rosario C. Casa (accused-appellant) based on reasonable doubt as to the elements of Illegal Sale and Illegal Possession of Dangerous Drugs, and noncompliance with Section 21, Article II of Republic Act (RA) No. 9165,[1] as amended by RA No. 10640.[2] Among the several lapses in the chain of custody, Chief justice Alexander G. Gesmundo focused the discourse on the policemen's general explanation that failed to justify the conduct of the inventory and photography at the police station, instead of at the place of seizure.[3] I concur in accused-appellant's acquittal due to the failure of the prosecution to sufficiently establish the elements of the crimes, as well as the apprehending team's noncompliance with Section 21, particularly the failure of accused-appellant to sign the Inventory/Receipt of Property Seized, and the dearth of evidence on the management, storage, and preservation of the illegal drugs while in the custody of the forensic chemist and before they were transmitted to the trial court. However, I respectfully submit the following observations with respect to the immediacy of the inventory and photographing requirement.

What Section 21 and the IRR provides

The chain of custody rule, as originally embodied in Section 21, Article II of RA No. 9165, provides that "[t]he 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 persons/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[.]” The law highlights the immediacy of the inventory and photographing requirement of the illegal drugs as part of the chain of custody. The Implementing Rules and Regulations[4] (IRR) of RA No. 9165 further echoes immediacy as it explicitly requires the apprehending officer/team to “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 [DOJ], and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof[.]”[5]

In 2014, RA No. 10640 took effect, and substantially amended Section 21, but maintained the requirement of immediate conduct of physical inventory and photography. Section 21 now reads that the apprehending team having initial custody and control of the dangerous drugs 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 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[.]” The amendatory law further provides the location where the inventory and photography must be conducted which may be “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[.]” A saving clause was expressly added in that “noncompliance of these requirements under justifiable grounds, as long as the integrity and 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,” Corollarily, the Guidelines on the IRR of Section 21, as amended,[6] echoes the mandate of the law to “immediately after seizure and confiscation, mark, inventory and photograph” the drugs at the place “where the search warrant is served[.]” or in cases of warrantless seizures, “in the same nearest police station or nearest office of the apprehending officer/team, whichever is practicable” RA No. 10640, as well as the Guidelines on the IRR, requires strict compliance with the immediate physical inventory and photography of the seized illegal drugs.

What is the meaning of
“immediately”

Black’s Law Dictionary defines “immediate” as “present; at once; without delay; not deferred by any interval of time.” It denotes that the action is or must be taken either instantly or without any considerable loss of time.[7] However, the word “immediately” does not necessarily import the exclusion of any interval of time. It is a word without very definite signification and subject to its grammatical connections.[8] It is impossible to lay down any hard and fast rule as to what is the meaning of the word “immediately” in all cases.[9] Further stating that “immediately” is stronger than the expression “within a reasonable time,” it implies prompt, vigorous action, without any delay, and whether there has been delay is a question of fact, having regard to the circumstances of the particular case.[10]

The Court has applied the context of the word “immediately” in differing circumstances. In the case *People v. Maralit*,^[11] the Court found that the inventory and photography of the drugs were immediately conducted at the place of arrest, albeit there was a 10-minute gap from the moment the bricks of marijuana were confiscated to the moment they were marked and inventoried. The Court ruled that the prosecution adequately justified the 10 minutes between Maralit’s arrest and the marking and inventory of the items as time spent waiting for the arrival of the witnesses.^[12] In contrast, in *People v. Adobar*,^[13] none of the insulating witnesses were present during the confiscation of the drugs and the apprehending team summoned the Punong Barangay only sometime after the

seizure of the drugs. About 15 minutes from the call, the Punong Barangay arrived at the scene, and the Court held that the immediate conduct of the inventory after seizure and confiscation was not established.[14] Compliance with the requirement of immediacy therefore depends on the circumstances of each case.

Citing *People v. Musor*[15] (*Musor*), the ponencia expounded that 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. It adds that 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 at the office of the apprehending officer/team. In *Musor*, the Court further ruled that the explanation that people were already starting to gather was insufficient to justify the transfer of inventory and taking of photographs elsewhere.[16]

Musor was similarly applied in later cases.[17] In *People v. Dumanjug*,[18] the team leader's assessment that the convergence of more or less 200 people at the place where the buy-bust operation took place did not justify a deviation to undertake the requirement of inventory and photographing at the Philippine Drug Enforcement Agency (PDEA) office.[19] Likewise in *People v. Salenga*,[20] the reason of the poseur buyer that the inventory was conducted at the police station because the crowd was getting bigger was rejected by the Court since no threat to the security of the officers and the accused was proved.[21] Evidently, when no explanation or justification was preferred as to why the conduct of inventory and taking of photographs were impracticable at the place of apprehension, the buy-bust team already committed a procedural lapse in the custody and handling of the seized drugs.[22]

The Court then held, in *People v. Lim*,[23] that the immediate physical inventory and photography 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.[24] Hence, in *People v. Taglucop*,[25] the police officers adequately justified their transfer from the place of apprehension to the police station due to a confluence of factors, i.e., a crowd was gathering, it was raining, and the place of apprehension was unsafe.[26]

To stress the application of the immediate conduct of inventory and photography, it was categorically held in this case that generally, the inventory and photographing must be conducted at the place of seizure. The exception to this rule, where the physical inventory and taking of photographs of the seized item may be conducted at the nearest police station or at the nearest office of the apprehending officer or team, is when the police officers provide justification that: (1) it is not practicable to conduct the same at the place of seizure; or (2) the items seized are threatened by immediate or extreme danger at the place of seizure.[27]

The phrase "immediately after seizure and confiscation" pertains to both the time and place elements of the physical inventory and photographing of the drugs. Compliance with the time element necessitates the conduct of inventory and photographing right after confiscation, without unjustifiable delay or intervening period. On the other hand, the place element requires the inventory and photography either: (1) at the place of seizure or arrest; (2) at the nearest police station; or (3) at the nearest office of the apprehending officer/team, whichever is practicable. The original and amendatory laws, as well as its IRRs, do not explicitly mandate that the inventory and photographing must be done only at the place of arrest for warrantless seizures. Rather, the law expressly permits that in cases of warrantless seizures, the physical inventory and photography may be conducted at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable.[28] Hence, the element of immediacy is satisfied when the apprehending team inventories and photographs the illegal drugs right after its confiscation at the place of seizure, or at the nearest police station or office of the

apprehending team, provided that the prosecution established any justification or explanation in conducting the inventory and photography at a place other than that of seizure.

In *People v. Sultan*,^[29] it was the difficulty, if not the impossibility, of strictly complying with Section 21 during the actual apprehension which justifies the slight deviation by the arresting officers from the rule. The strong resistance of accused-appellant, to the arrest and the interference of several persons made it imperative upon the apprehending police officers to withdraw from the place immediately.^[30] In *People v. Moner*,^[31] the police officers reasoned that the physical inventory was not done at the place of seizure was because of their unfamiliarity with the place – it was not their area of responsibility. The circumstances that the buy-bust team proceeded first to the Central Police District Station, Camp Karingal in Quezon City and, from there, they were accompanied by a police officer from the station to the target location, aside from proving that it was a legitimate police operation, supported the existence of a security risk to the buy-bust team. These additional precautions taken by the buy-bust team underscored their unfamiliarity with the location of the operation and, in fact, corroborated the above-quoted testimony that the buy-bust team believed there was a threat to their security. The divergence in procedure was not arbitrary or whimsical but because the buy-bust team decided that they could not linger at the crime scene, as it would unduly expose them to security risks since they were outside their area of responsibility. ^[32]

In *People v. Guadaña*,^[33] the buy-bust operation was conducted past 9:00p.m., on a bridge that was located in a remote area. Given the surrounding circumstances, it was neither practical nor safe for the arresting team to conduct the required inventory at the place of apprehension. Moreover, there was neither a DOJ representative or media man available in Manito, Albay because of its distance from Legazpi City, where these representatives are staying. The highway connecting the Municipality of Manito and the City of Legazpi is also a critical area in terms of security due to the insurgency.^[34] In *People v. Magalong*,^[35] the arresting team made an initial inventory at the place of arrest and transferred to the PDEA office to continue the inventory. The team clarified that their decision to continue the inventory at the PDEA office was for security reasons. A crowd was gathering at the vicinity that was also a few meters away from the Muslim area.^[36] In *People v. Buesa*,^[37] while marking of the evidence was done at the place of arrest, the police officers had to conduct the inventory and photography at the police station because the place where Buesa was arrested was a dangerous and accident-prone area.^[38]

In these cases, the apprehending team did not have unbridled discretion on when and where to conduct the inventory and photography process. As the exigencies of the buy-bust operation surfaced, each team made a calculated and strategic decision to momentarily defer the inventory, leave the place of apprehension, and transfer to the nearest police station or nearest office of the apprehending officer/team. It is apparent that the continuation of the inventory and photography elsewhere was conducted because of impracticable circumstances. The transfer was not arbitrary, but the result of conditions beyond the control of the buy-bust team. While delay could be attributed to them, it is neither unreasonable nor groundless. The intervening period between the time of seizure at the place of arrest, and the time of inventory and photography at the nearest police station or office of the apprehending officer/team, was adequately justified.

Therefore, the element of immediacy contemplates either: first, the conduct of the inventory and photography right after seizure and confiscation, without unjustifiable delay or intervening period at the place of seizure or arrest; and second, the conduct of the inventory and photography at the nearest police station or nearest office of the apprehending team/whichever is practicable, provided that the prosecution sufficiently established any reasonable justification or explanation in conducting the inventory and photography at a place other than that of seizure or arrest.

Immediate conduct of inventory and

photography under the PNP Manuals

The 2010 Philippine National Police (PNP) Manual on Anti-Illegal Drugs Operation and Investigation[39] (2010 PNP Manual) incorporates the conduct of the inventory and photography during planned buy-bust operations against drug personalities. Section 13, Rule II of the 2010 PNP Manual guides the apprehending team in the handling, custody, and disposition of the drug evidence, thus:

A-Drug Evidence

a. Upon seizure or confiscation of the dangerous drugs x x x, the operating unit's seizing officer/inventory officer must conduct the physical inventory, markings and photograph the same in the place of operation in the presence of:

- The suspect/s or the person/s from whom such items were confiscated and/or seized or his/her representative or counsel;
- A representative from the media;
- A representative from the Department of Justice; and
- Any elected public official who shall affix their signatures and who shall be given copies of the inventory.

b. For seized drugs covered by search warrants, the inventory must be conducted in the place where the search was served.

c. In warrantless seizures like buy-bust operations, the inventory and the taking of photographs should be done at the nearest police station or office of the apprehending officer or team. However, the apprehending authority is not precluded from conducting the inventory at the place where the drugs were seized.

x x x x (Emphasis supplied)

After RA No. 10640 became effective in 2014, the Revised PNP Manual on Anti-Illegal Drugs. Operations and Investigation[40] (2014 PNP Manual) was issued. Item 2.36, Section 2-6, Chapter 2 of the 2014 PNP Manual retained the provision that the inventory and photography should be conducted at the place of operation, or at the nearest police station, or office of the apprehending team, to wit:

a. Drug Evidence.

1)

Upon seizure or confiscation of illegal drugs x x x, the operating Unit's Seizing Officer/Inventory Officer must conduct the physical inventory, markings and photograph the same in the place of operation in the presence of:

(a)

The suspect/s or the person/s from whom such items were confiscated and/or seized or his/her representative or counsel;

(b)

With an elected Public Official; and

(c)

Any representatives from the Department of Justice or Media who shall affix their signatures and who shall be given copies of the inventory.

2)

For seized or recovered drugs covered by Search Warrants, the inventory must be conducted in the place where the Search Warrant was served.

3)

For warrantless seizures like buy-bust operations, inventory and taking of photographs should be done at the nearest Police Station or Office of the apprehending Officer or Team.

x x x x (Emphasis supplied)

At present, the Revised PNP Operational Procedures issued on September 2021[41] (2021 PNP Manual) categorically directs law enforcement officers to comply with the immediate inventory and photography of the confiscated or discovered drugs. Item 2.8 (c), Rule 2, Chapter 2 of the 2021 PNP Manual's Rules on Anti-Drugs Operations provides:

c. Handling, Custody and Disposition of Drug and Non-Drug Evidence (DOJ, 2020).

x x x Photographs of pieces of evidence must be taken immediately upon discovery of such, including the process of recording the inventory in the presence of the required witnesses. x x x

1)

Drug evidence

a)

Upon seizure or confiscation of dangerous drugs x x x, the operating unit's seizing officer/inventory officer must conduct the photographing, marking and physical inventory in the place of operation in the presence of:

(1)

The suspect/s or the person/s from whom such items were confiscated aid/or seized or is/her representative or counsel.

(2)

An elected public Official; and

(3)

Representative from the National Prosecution Service (NPS) or media, who shall affix their signatures and who shall be given copies of the inventory. The Chain of Custody Form for Drug Evidence, Non-Drug Evidence and for Laboratory, whichever is applicable, shall be accomplished together with the Certificate of Inventory of Seized Items.

b)

For seized or recovered drugs covered by search warrants, the photographing, marking and inventory must be done in the place where the search warrant was served.

c)

For warrantless seizures like buy-bust operations, the photographing, markings, and physical inventory must be done at the place of apprehension, unless for justifiable reasons, the photographing, markings, and physical inventory may be made at the nearest police station or office of the apprehending officer or team, ensuring that the integrity and evidentiary value of the seized items remain intact and preserved. Such justification or explanation as well as the steps taken to preserve the integrity and evidentiary value of the seized/confiscated items shall be clearly stated in a sworn affidavit of justification/explanation of the apprehending/seizing officers.

d)

x x x x

e)

In case of seizure of plant sources at the plantation site, where it is not physically possible to count or weigh as a complete entity, the seizing officer shall estimate its count of gross weight, as the case may be. If it is safe and practicable, the photographing marking and inventory of the seized plant sources may be performed at the plantation site. x x x

x x x x (Emphasis supplied)

Clearly, the provisions in the 2010, 2014. and 2021 PNP Manuals strengthen the mandate of RA No. 10640 and its IRR to immediately conduct the inventory and photographing requirements at the place of operation; or at the nearest police station or nearest office of the apprehending team, whichever may be practicable. Law enforcement officers are sufficiently trained to execute their drug operations in strict compliance with the amendatory law.

Accordingly, I vote to GRANT the appeal.

[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 THEREFOR, AND FOR OTHER PURPOSES", approved June 7, 2002.

[2] Entitled "AN ACT TO FURTHER STRENGTHEN THE ANTI-DRUG CAMPAIGN OF THE GOVERNMENT, AMENDING FOR THE PURPOSE SECTION 21 OF REPUBLIC ACT NO. 9165, OTHERWISE KNOWN AS THE "COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002," approved on July 15, 2014. RA No. 10640 took effect on August 7, 2014, or 16 days after its complete publication in two newspapers of general circulation, The Philippine Star and the Manila Bulletin, on July 23, 2014.

[3] See ponencia, pp. 14-32.

[4] Entitled "IMPLEMENTING RULES AND REGULATIONS (IRR) OF REPUBLIC ACT NO. 9165, OTHERWISE KNOWN AS THE 'COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002'": approved on August 30, 2002,

[5] See Section 21 of the IRR of RA No. 9165.

[6] Entitled "GUIDELINES ON THE IMPLEMENTING RULES AND REGULATIONS (IRR) OF SECTION

21 OF REPUBLIC ACT NO. 9165, AS AMENDED BY REPUBLIC ACT NO. 10640"; approved on May 28, 2015.

[7] Immediate, BLACK'S LAW DICTIONARY, 2[ND] ED., available at <<https://thelawdictionary.org/immediate/>> (last accessed on August 16, 2022).

[8] Id., citing *Howell v. Gaddis*, 31 N.J. Law, 313.2.

[9] Immediately, BLACK'S LAW DICTIONARY, 2[ND] ED., available at <<https://thelawdictionary.org/immediately/>> (last accessed on August 16, 2022).

[10] Id., citing *Cockburn, C.J.*, in *Reg. v. Justices of Berkshire*, 4 Q.B. Div. 471.

[11] 838 Phil. 191 (2018) [Per J. Reyes, Jr., Second Division].

[12] See id. at 207-209.

[13] 832 Phil. 731 (2018) [Per J. Caguioa, Second Division].

[14] See id. at 753-758.

[15] G.R. No. 231843, November 7, 2018, 885 SCRA 154 [Per J. Caguioa, Second Division].

[16] See ponencia, pp. 16-17.

[17] See id. at 17-18.

[18] G.R. No. 235468, July 1, 2019, 907 SCRA 89 [Per J. Caguioa, Second Division].

[19] See id. at 111-112.

[20] G.R. No. 239903, September 11, 2019, 919 SCRA 342 [Per J. Jardeleza, First Division].

[21] See id. at 356-359.

[22] *People v. Tubera*, G.R. No. 216941, June 10, 2019, 903 SCRA 375, 392-395 [Per J. Caguioa, Second Division].

[23] 839 Phil. 598 (2018) [Per J. Peralta, En Banc].

[24] Id. at 620. See also *People v. Mola*, 830 Phil. 364, 375-376 (2018) [Per J. Peralta, Second Division].

[25] G.R. No. 243577, March 15, 2022. <<https://sc.judiciary.gov.ph/27556/>> [Per. C.J. Gesmundo, First Division].

[26] Id.

[27] See ponencia, p. 19.

[28] See *People v. Juan*, G.R. No. 249183, December 7, 2021 [Notice, First Division]; and *People v. Dayo*, G.R. No. 249161, September 16, 2020 [Notice, Third Division].

[29] 637 Phil. 528 (2010) [Per J. Villarama, Jr., Third Division].

[30] Id. at 540.

[31] 827 Phil. 42 (2018) [Per J. Leonardo-De Castro, First Division].

[32] Id. at 61.

[33] 836 Phil. 1219 (2018) [Per J. Reyes, Jr., Second Division].

[34] See id. at 1226-1227.

[35] G.R. No. 231838, March 4, 2019, 894 SCRA 554 (Per J. Peralta, Third Division).

[36] See id. at 568-569.

[37] G.R. No 237850, September 16, 2020, <<https://sc.gov.ph/14116/>> [Per C.J. Peralta, First Division].

[38] See id.

[39] See National Police Commission Resolution No. 2010-094, entitled "APPROVING THE PNP MANUAL ON ANTI-ILLEGAL DRUGS OPERATION AND INVESTIGATION" (February 26, 2010).

[40] See PNP Manual PNPM-D-0-2-14 (DO), entitled "REVISED PNP MANUAL ON ANTI-ILLEGAL DRUGS OPERATIONS AND INVESTIGATION" (September 2014).

[41] See PNP Manual PNPM-DO-D-0-2-D-21, entitled "REVISED PHILIPPINE NATIONAL POLICE OPERATIONAL PROCEDURES" (September 2021).

CONCURRING AND DISSENTING OPINION

KHO, JR., J.:

I concur in the result.

I.

Accused-appellant Ma. Del Pilar Rosario C. Casa a.k.a. "Marfy Calumpang," "Madam," and "Mah-Mah" (accused-appellant) must be acquitted for the crimes of Illegal Sale and Illegal Possession of Dangerous Drugs under Sections 5 and 11, Article II of Republic Act No. (RA) 9165[1], respectively, due to an unjustified deviation from the chain of custody rule in drug cases.

As pointed out by the distinguished ponente, Chief Justice Alexander G. Gesmundo, the fourth link of the chain of custody rule was not established by the prosecution due to the fact that the stipulations on the testimony of the forensic chemist "are bereft of information regarding the condition of the seized item while in PCI Llena's custody and the precautions she undertook to preserve their integrity." [2] I also agree with the ponencia that "[a]bsent any testimony on the management, storage, and preservation after the qualitative examination of the illegal drugs allegedly seized, this again adds doubt whether the fourth link was duly complied with." [3] Thus, I fully concur in the ponencia's conclusion that "the utter lack of details on the condition and handling of the seized drugs from the period after its examination until the same were brought to the trial court results in a gap in the chain of custody of the seized drugs, thereby casting serious doubt on the identity and integrity of the corpus delicti." [4]

Thus, accused-appellant's acquittal is in order, pursuant to the principle that every link in the chain of custody is crucial to the preservation of 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. [5]

II.

Notwithstanding the foregoing, I respectfully tender my dissent on the other ground relied upon by the ponencia in acquitting accused-appellant – that the apprehending officer/team failed to justify the conduct of inventory and taking of photographs of the confiscated drugs at the office of the Special Operations Group of the Negros

Oriental Police Provincial Office (SOG-NOPPO), instead at the place where accused-appellant was arrested. In this regard, the ponencia posits that under prevailing law, rules, and jurisprudence, the conduct of inventory and taking of photographs of the confiscated drugs should be done, as a general rule, at the place of seizure of the drugs. As an exception, the ponencia states that if the apprehending officer/team is able to provide a justifiable reason for not conducting the inventory and taking of photographs at the place of seizure, then they may perform the same at the nearest police station or at the nearest office of the apprehending team.[6]

I submit that requiring the apprehending officer/team in warrantless seizures to conduct inventory and taking of photographs of the confiscated drugs at the place of seizure is not what the language of the law says. The language of the law – Section 21 of RA 9165, as amended by Section 1 of RA 10640[7] – is clear that in warrantless arrests, the apprehending officer/team is mandated to conduct inventory and taking of photographs of the confiscated drugs at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, and not at the place of seizure thereof.

I respectfully 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, even if it 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 states and requires, will, as ruled by the majority in this case, 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 inventory and taking of photographs of the confiscated drugs shall be done at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, the Court should not depart from what the law says it should be.

III.

Before proceeding to expound on the reasons for my dissent, I express my gratitude to the ponente for favorably considering my concerns on whether the accused is required to sign the inventory sheet.

In a catena of cases, 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.[9]

In *People v. Dizon*,[10] 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.[11]

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 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.

Now, the rationale for my dissent.

IV.

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." [12]

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 rule 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.

V.

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." [13] 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." [14] 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." [15]

In *People v. Santos*, [16] 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." [17] (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.

VI.

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.

However, the amendment by Section 1 of RA 10640 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 the inventory and taking of photographs of the confiscated drugs. It should be noted that prior to the amendment, the original text of Section 21 of RA 9165 did not provide for the places where inventory and taking of photographs should be conducted. It is significant to note that Section 1 of RA 10640 is what applies in this case since the Information alleged that the accused-appellant committed the crimes on July 21, 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[18]

Section 1 of RA 10640, amending Section 21 of RA 9165, effective as of August 7, 2014[19]

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.

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 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: 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.

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 issue on where the apprehending officer/team should conduct of inventory and taking of photographs, which provisos, as mentioned earlier, were not stated in the original text of Section 21 of RA 9165.

The two (2) new provisos are:

- "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
- "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 what the ponencia calls 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,[20] four months from the effective date of RA 9165. Pursuant to Section 94[21] of RA 9165, government agencies exercised their power of subordinate legislation[22] 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[23] – the details on where the inventory and taking of photographs should be conducted and the saving clause.

Notably, 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)

As shown above, the two (2) provisos appearing as early as in the IRR of RA 9165 on where to conduct of inventory and taking of photographs of the confiscated drugs and the saving clause got the approval of Congress when it lifted the two (2) provisos in the IRR of RA 9165 and incorporated the same in Section 1 of RA 10640, amending Section 21 of RA 9165. These significant changes in the law brought about by the amendment 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.

It is discerned that the apparent source of confusion as to where should the conduct of inventory and taking of photographs of the confiscated drugs shall be done is due of the phrase appearing in Section 21 of RA 9165 and Section 1 of RA 10640 that inventory and taking of photographs should be done, in relation to the First Proviso thereof, "immediately after seizure and confiscation." As cited by the ponencia, this phrase has given rise to a number of divergent decisions of the Court on this particular issue. However, the ponencia, abandoning *Tumabini v. People*,^[24] adopted the view expressed in several cases^[25] 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."^[26]

I humbly dissent from this view of the ponencia. 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.

I 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 – 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 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*^[27] 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*,^[28] 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*,^[29] 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 at the instance of the apprehending officer/team, depending on how the seizure was made, particularly:

- 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.

- 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."

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 propounded by the ponencia as explained above.[30]

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, as what the ponencia posits. 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 explanation of Retired Senior Associate Justice Estela M. Perlas-Bernabe (SAJ Perlas-Bernabe) in a case involving the issue of the proper interpretation of the phrase "whichever is practicable," which she circulated prior to her retirement. SAJ Perlas-Bernabe eruditely explained:

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.[31] (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 insulating witnesses must be present during the inventory and the taking of photographs. This 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 apprehending officers but also the insulating 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.[32] (Emphases supplied)

Further, in *People v. Battung*,^[33] 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." [34] (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, 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.[35] (Emphasis, italics, and underscoring in the original)

VII.

At this juncture, I wish to address the ponencia's inclusion of the Revised Philippine National Police Operational Procedures dated September 2021 (2021 PNP Manual) as additional support for the general rule-exception dynamic that it foists. Pertinent portions of the 2021 PNP Manual as cited by the ponencia read as follows:

2.8 Rules on Anti-Illegal Drugs Operations

x x x x

1) Drug Evidence

x x x x

c) For warrantless seizures like buy-bust operations, the photographing, markings, and physical inventory must be done at the place of apprehension, unless for justifiable reasons, the photographing, markings, and physical inventory may be made at the nearest police station or office of the apprehending officer or team, ensuring that the integrity and evidentiary value of the seized items remain intact and preserved. Such justification or explanation as well as the steps taken to preserve the integrity and evidentiary value of the seized/confiscated items shall be clearly stated in a sworn affidavit of justification/explanation of the apprehending/seizing officers.[36]

However, it bears pointing out that prior to the enactment of the 2021 PNP Manual, the PNP used to adhere to the 2013 Revised PNP Operational Procedures (2013 PNP Manual)[37] and the 2014 Revised PNP Manual on Anti-Illegal Drugs Operations and Investigations (2014 PNP AIDSOTF Manual).[38] Pertinent portions of these issuances read:

2013 PNP Manual

2014 PNP AIDSOTF Manual

37.3. Handling, Custody and Disposition of Evidence

- a. In the handling, custody and disposition of evidence, the provision of Section 21, RA 9165 and its IRR shall be strictly observed.
- b. 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.
- c. 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, 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.
- d. Photographs of the pieces of evidence must be taken upon discovery without moving or altering its position in

the place where it was situated, kept or hidden, including the process of recording the inventory and the weighing of dangerous drugs, and if possible under existing conditions, with the registered weight of the evidence on the scale focused by the camera, in the presence of the persons required, as provided under Section 21, Art II, RA 9165. x x x x

Section 2-6 Handling, Custody and Disposition of Drug and Non-Drug Evidence

2.33. During handling custody, and disposition of evidence, provisions of Section 21, RA 9165 and its IRR as amended by RA 10640 shall be strictly observed.

2.34. Photographs of pieces of evidence must be taken immediately upon discovery of such, without moving or altering its original position, including the process of recording the inventory and the weighing of illegal drugs in the presence of required witnesses, as stipulated in Section 21, Article II, RA 9165, as amended by RA 10640

x x x x

a. Drug Evidence

(1) Upon seizure or confiscation of illegal drugs or SPECS, laboratory equipment, apparatus and paraphernalia, the operating Unit's Seizing Officer/Inventory Officer must conduct the physical inventory, markings and photograph the same in the place of operation in the presence of:

(a) The suspect/s or the person/s from whom such items were confiscated and/or seized or his/her representative or counsel;(b) With an elected Public Official; and (c) Any representatives from the Department of Justice or Media who shall affix their signatures and who shall be given copies of the inventory.

(2) For seized or recovered drugs covered by Search Warrants, the inventory must be conducted in the place where the Search Warrant was served.

(3) For warrantless seizures like buy-bust operations, inventory and taking of photographs should be done at the nearest Police Station or Office of the apprehending Officer or Team. x x x x

x x x x

As may be gleaned above, both the 2013 PNP Manual and the 2014 PNP AIDSOTF Manual adhere to the view expressed in this dissent that the conduct of inventory and taking of photographs should be conducted at the places that I have discussed, whichever is practicable to the apprehending officer/team, at – the nearest police station or office of the apprehending officer/team.

As I see it, the issuance of the 2021 PNP Manual was a mere reaction of the PNP to the series of case law[39] which foists the general rule-exception dynamic as to the proper place where the conduct of inventory and taking of photographs may be done. As one of the agencies primarily tasked to enforce our laws, it would only be natural for the PNP to adopt jurisprudence into its internal procedures pertaining to drugs operations, lest they risk putting their efforts to waste should the courts acquit violators of our anti-drugs laws due to such jurisprudence – which in my humble view and with all due respect, propagates a skewed and unreasonable interpretation of the chain of custody rule as expressed in Section 21 of RA 9165, as amended by Section 1 of RA 10640, that oversteps into impermissible judicial legislation.

At the most, it may be argued the 2021 PNP Manual may be regarded as a guide to the construction of the chain of custody rule pursuant to the contemporaneous interpretation rule. The said rule provides that "the practice and interpretive regulations by officers, administrative agencies, departmental heads, and other officials charged with the duty of administering and enforcing a statute will carry great weight in determining the operation of a

statute."[40] Otherwise stated, "[i]n the construction of a doubtful and ambiguous law, the contemporaneous construction of those who are called upon to act under the law, and were appointed to carry its provisions into effect, is entitled to very great weight."[41]

However, it must be kept in mind that while the contemporaneous interpretation of those tasked to implement the law may be given great weight, it is not necessarily controlling as only the courts may properly interpret the law. In fact, in *Adasa v. Abalos*,[42] the Court held that courts may validly disregard the contemporaneous interpretation of administrative agencies "in instances where the law or rule construed possesses no ambiguity, where the construction is clearly erroneous, where strong reason to the contrary exists, and where the court has previously given the statute a different interpretation," as in this case, viz.:

True indeed is the principle that a contemporaneous interpretation or construction by the officers charged with the enforcement of the rules and regulations it promulgated is entitled to great weight by the court in the latter's construction of such rules and regulations. That does not, however, make such a construction necessarily controlling or binding. For equally settled is the rule that courts may disregard contemporaneous construction in instances where the law or rule construed possesses no ambiguity, where the construction is clearly erroneous, where strong reason to the contrary exists, and where the court has previously given the statute a different interpretation.

If through misapprehension of law or a rule an executive or administrative officer called upon to implement it has erroneously applied or executed it, the error may be corrected when the true construction is ascertained. If a contemporaneous construction is found to be erroneous, the same must be declared null and void.[43] (Emphases and underscoring supplied)

As discussed, the 2021 PNP Manual only reacted to the series of case law which foists the general rule-exception dynamic which is now being propounded by the ponencia, which in my humble opinion, does not reflect the unambiguous wording of the law. It must be borne in mind that any conflict with a set operational guidelines of a law enforcement agency and the law should always be resolved in favor of the latter. Since these operational guidelines ought to merely supplement what is written in the law, they should not go beyond, but rather, reflect the letter and spirit of the statute.

VIII.

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 his/her 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.

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 in order "to ensure the establishment of the chain of custody and remove any suspicion of switching, planting, or contamination of evidence"[44] 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 the safety of the arresting officers and insulating witnesses.

IX.

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."

Citing *People v. Luna*,[45] the ponencia mentioned the two (2) requisites before the prosecution can invoke the Second Proviso, or what the ponencia calls the "saving clause," in order not to render void and invalid the seizure and custody of the confiscated drugs, to wit:[46]

- The existence of "justifiable grounds" allowing departure from the rule on strict interpretation; and
- The integrity and the evidentiary value of the seized items are properly preserved by the apprehending team.

For the first requisite, the case law cited by the ponencia states that 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 drug cases, the apprehending officer/team should recognize the deviations or lapses made in the chain of custody rule 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.

As early as in *Mallillin v. People*[47] (*Mallillin*) involving "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 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.[48] (emphases and underscoring supplied)

Pursuant to *Mallillin's* instructions, the Court has consistently ruled in a catena of cases[49] that trial courts should exercise strict or heightened scrutiny when minuscule amounts of illegal drugs are presented into evidence, which I fully agree. This is because in instances when minuscule 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*,[50] "[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." This provides the rationale of the chain of custody rule.

On the other hand, if the illegal drugs offered as evidence involve large amounts of illegal drugs, 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.[51]

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 respectfully 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.

X.

In another matter, it is settled that the lone testimony of a poseur buyer in a buy-bust operation may suffice to convict an accused, provided, that such testimony be credible, reliable, clear, and convincing.[52] In such case, it is essential only that the witness be able to recount and relate the actual events that transpired which justified the arrest of the accused.

Thus, "it is imperative that the witness declares that there was a negotiation for the purchase of the drug and that the pusher sold and delivered the drug in view of some material consideration which in most cases takes the form of marked peso bills. Once these facts are clearly established through the testimony of a credible witness, the guilt of the accused can be deemed established with moral certainty. However, the assessment of the trial court regarding the credibility of a witness can be set aside if it is shown that certain facts of substance have been overlooked or circumstances of significance which may affect the result of the case have been arbitrarily disregarded."[53]

In this regard, the Court's pronouncement in *People v. Evangelista*,[54] is instructive:

In buy-bust operations, the testimonies of the police officers who apprehended the accused are usually accorded full faith and credit because of the presumption that they have performed their duties regularly. The presumption is overturned only if there is clear and convincing evidence that they did not properly perform their duty or that they were inspired by improper motive. Nevertheless, the courts are advised to take caution in applying the presumption of regularity. It should not by itself prevail over the presumption of innocence and the constitutionally-protected rights of the individual. In fact it is on this premise that we have laid down the "objective" test in scrutinizing buy-bust operations. In *People v. Doria*, we ruled:

We therefore stress that the "objective" test in buy-bust operations demands that the details of the purported transaction must be clearly and adequately shown. This must start from the initial contact between the [poseur buyer] and the pusher, the offer to purchase, the promise or payment of the consideration until the

consummation of the sale by the delivery of the illegal drug subject of the sale. The manner by which the initial contact was made, whether or not through an informant, the offer to purchase the drug, the payment of the "buy-bust" money, and the delivery of the illegal drug, whether to the informant alone or the police officer, must be the subject of strict scrutiny by courts to insure that law-abiding citizens are not unlawfully induced to commit an offense. Criminals must be caught but not at all cost. At the same time, however, examining the conduct of the police should not disable courts into ignoring the accused's predisposition to commit the crime. If there is overwhelming evidence of habitual delinquency, recidivism or plain criminal proclivity, then this must also be considered. Courts should look at all factors to determine the predisposition of an accused to commit an offense in so far as they are relevant to determine the validity of the defense of inducement.[55]

Relatedly, in *People v. Ordiz*[56] (*Ordiz*) cited by the ponencia, the Court ruled that considering the gravity of the penalty for the offense charged, the courts should be careful in reviewing and weighing the probative value of the testimony of an alleged poseur buyer especially if the same is uncorroborated by the testimonies of his teammates in the buy-bust operation, thus:

It is an ancient principle of our penal system that no one shall be found guilty of crime except upon proof beyond reasonable doubt. Thus, in proving the existence of the aforesaid elements of the crime charged, the prosecution has the heavy burden of establishing the same. The prosecution must rely on the strength of its own evidence and not on the weakness of the defense.

In accordance with these principles, the Court has held that, considering the gravity of the penalty for the offense charged, courts should be careful in receiving and weighing the probative value of the testimony of an alleged [poseur buyer] especially when it is not corroborated by any of his teammates in the alleged buy-bust operation. Sheer reliance on the lone testimony of an alleged [poseur buyer] in convicting the accused does not satisfy the quantum of evidence required in criminal cases, that is, proof beyond reasonable doubt.[57] (Emphasis and underscoring supplied)

In *Ordiz*, the prosecution presented three (3) witnesses: SPO1 Ursal, Jr., PO2 Capangpangan, and SPO1 Cerna. However, it was found that the testimony of SPO1 Ursal, Jr. and PO2 Capangpangan were unclear on whether they actually saw the transaction or simply rushed up to arrest the accused therein after the pre-arranged signal was given. It then ruled that the prosecution's case hinged on the uncorroborated testimony of the supposed poseur buyer, whose testimony on the direct testimony was found by the trial court to be unclear and lacking in detail; hence, unreliable and not credible. In view thereof, the Court acquitted the accused therein.

Similarly, in the cases of *People v. Escalona*[58] (*Escalona*) and *People v. Salonga*[59] (*Salonga*), the Court acquitted therein accused due to the unreliability of the lone testimonies of the respective poseur buyers. Particularly, in *Escalona*, the Court pointed out that there is serious doubts on the credibility of the lone testimony of the poseur buyer insofar as his motive in giving such testimony is concerned, in view of the bad blood existing between him and the accused; whereas in *Salonga*, the Court acquitted the accused therein as major lapses were not explained by the testimony of the prosecution's lone witness, raising doubt as to the preservation of the integrity of the evidence seized from the accused.

From the foregoing cases, it may readily be seen that the testimony of the poseur buyer, standing alone, should be sufficient to convict an accused in drugs cases if it is found to be credible and reliable. Otherwise, an acquittal would ensue.

XI.

For future reference, I would like to take this opportunity to lay down my proposed guidelines on the proper interpretation as to what constitutes compliance with the first link of the chain of custody rule, particularly as to the major components thereof, which are: (a) the marking of the drugs seized from the accused; and (b) the

conduct of inventory and taking of photographs of the same, to wit:

- The marking of the confiscated drugs seized from the accused must be done:
- When: Immediately after the confiscation of the illegal drugs;
- Where: At the place of confiscation; and
- With whom: In the presence of the apprehended offender.
- The conduct of inventory and taking of photographs of the confiscated drugs (if after the effectivity of RA 10640 on August 7, 2014,[60] to include controlled precursors and essential chemicals, instruments/paraphernalia and/or laboratory equipment) seized from the accused must be done:

- When: Immediately after seizure and confiscation;
- 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;

- 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;

- 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.

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

- 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:

- If the seizure occurred during the effectivity of RA 9165, or from August 3, 2002[61] 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;

- 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; and

- 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.

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

- 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.

- 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 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 accused-appellant due to the unjustified deviation from the fourth link of the chain of custody rule as discussed in the early part of this Opinion,[62] as this case involves a minuscule amount of illegal drug, thus requiring the 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 her acquittal from the crimes charged.

ACCORDINGLY, I VOTE to acquit accused-appellant of the crimes charged.

[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] See ponencia, p. 37.

[3] Id.

[4] Id. at 39.

[5] See *People v. Villalon*, G.R. No. 249412, March 15, 2021, citing *People v. Ubungen*, G.R. No. 225497, July 23, 2018.

[6] See ponencia, pp. 16-28.

[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. XVIII, 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.

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

[9] See *People v. Dizon*, G.R. No. 223562, September 4, 2019; *People v. Endaya*, G.R. No. 205741, July 23, 2014; *People v. Mariano*, G.R. No. 191193, November 14, 2012; *People v. Macabalang*, 538 Phil. 136, 162 (2006); *People v. Del Castillo*, 482 Phil. 828 (2004); *Gutang v. People*, 390 Phil. 805, 813 (2000); *People v. Lachanes*, 336 Phil. 933, 942 (1997); *People v. Castro*, G.R. No. 106583, June 19, 1997; *People v. Morico*, 316 Phil. 270, 277 (1995); *People v. Bandin*, G.R. No. 104494, September 10, 1993; *People v. Mirantes*, G.R. No. 92706, May 21, 1992; *People v. Mauyao*, G.R. No. 84525, April 6, 1992; *People v. De Las Marinas*, G.R. No. 87215, April 30, 1991; *People v. De Guzman*, G.R. No. 86172, March 4, 1991. (Underscoring supplied)

[10] See G.R. No. 223562, September 4, 2019.

[11] *Id.*, citing *People v. Del Castillo*, 482 Phil. 828, 851 (2004).

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

[13] *People v. Ramirez*, 823 Phil. 1215 (2018).

[14] *Id.*, citing *People v. Nuarin*, 764 Phil. 550, 558 (2015).

[15] *People v. Dahil*, 750 Phil. 212, 232 (2015), citing *People v. Sabdula*, G.R. No. 184758, April 21, 2014.

[16] 823 Phil. 1162 (2018).

[17] *Id.*, citing *People v. Somoza*, 714 Phil. 368, 387-388 (2013). See also *People v. Ramirez*, *supra*, citing *People v. Sanchez*, 590 Phil. 214, 241 (2008).

[18] 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.

[19] 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. XVIII, 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.

[20] See <https://pdea.gov.ph/images/Laws/IRROFRA9165.pdf> (last accessed July 18, 2022)

[21] 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.

[22] "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], citing *The Conference of Maritime Manning Agencies, Inc. v. Philippine Overseas Employment Administration*, 313 Phil. 592 [1995].)

[23] See *The Conference of Maritime Manning Agencies, Inc. v. POEA*, 313 Phil. 592 (1995), citing *Eastern Shipping Lines, Inc. v. POEA*, 248 Phil. 762 (1988).

[24] G.R. No. 234495, February 19, 2020.

[25] See *People v. Taglucop*, G.R. No. 243577, March 15, 2022; *People v. Salenga*, G.R. No. 239903, September

11, 2019; *People v. Tubera*, G.R. No. 216941, June 10, 2019; *People v. Musor*, G.R. No. 231843, November 7, 2018; *People v. Lim*, G.R. No. 231989, September 4, 2018.

[26] See ponencia, pp. 16-28.

[27] 48 Phil. 931 (1921).

[28] 41 Phil. 322 (1921).

[29] 172 Phil. 306 (1978).

[30] See ponencia, p. 32. See also ponencia, pp. 16-20.

[31] SAJ Perlas-Bernabe's Reflections in *Nisperos v. People* (G.R. No. 250927), pp. 7-8; citations omitted.

[32] See *id.*, citing Senate Journal, Session No. 80, 16[th] Congress, 1[st] Regular Session, June 4, 2014, p. 349--350.

[33] 833 Phil. 959 (2018).

[34] *Id.*

[35] SAJ Perlas-Bernabe's Reflections in *Nisperos v. People* (G.R. No. 250927), p. 10.

[36] See ponencia, pp. 19-20. See also Philippine National Police Manual PNPM-DO-D-0-2-12-21, pp. 65-66.

[37] Philippine National Police Handbook PNPM-DO-DS-3-2-12.

[38] Philippine National Police Manual PNPM-D-0-2-14 (DO).

[39] See *People v. Taglucop*, G.R. No. 243577, March 15, 2022; *People v. Salenga*, G.R. No. 239903, September 11, 2019; *People v. Tubera*, G.R. No. 216941, June 10, 2019; *People v. Musor*, G.R. No. 231843, November 7, 2018; *People v. Lim*, G.R. No. 231989, September 4, 2018.

[40] 2 Sutherland, Statutory Construction, p. 516.

[41] *Edwards Lessee v. Darby*, 25 U.S. 206, 210 (1827).

[42] 545 Phil. 168 (2007).

[43] *Id.*

[44] *Saban v. People*, G.R. No. 253812, June 28, 2021, citations omitted.

[45] 828 Phil. 671 (2018).

[46] See ponencia, pp. 28-29.

[47] 576 Phil. 576 (2008).

[48] *Id.*

[49] See *People v. Ortega*, G.R. No. 240224, February 23, 2022; *People v. Pagaspas*, G.R. No. 252029, November 15, 2021; *People v. Veloo*, G.R. No. 252154, March 24, 2021; *Palencia v. People*, G.R. No. 219560, July 1, 2020; *Pimentel v. People*, G.R. No. 239772, January 29, 2020; *People v. Asaytuno, Jr.*, G.R. No. 245972, December 2, 2019; *People v. Alon-Alon*, G.R. No. 237803, November 27, 2019; *People v. Zapanta*, G.R. No. 230227, November 6, 2019; *People v. Que*, G.R. No. 212994, January 31, 2018; *People v. Holgado*, G.R. No. 207992, August 11, 2014.

[50] G.R. No. 233209, March 11, 2019.

[51] See *People v. Magayon*, G.R. No. 238873, September 16, 2020.

[52] See *People v. Alvarado*, 312 Phil. 552 (1995). See also *People v. Salonga*, 617 Phil. 997 (2009); *People v. Evangelista*, 560 Phil. 510 (2007); *People v. Macasa*, 299 Phil. 440 (1994); *People v. Abelita*, 285 Phil. 1001 (1992).

[53] *People v. Alvarado*, *id.*

[54] 560 Phil. 510 (2007).

[55] *Id.*, citing *People v. Doria*, 361 Phil. 595, 621 (1999).

[56] See G.R. No. 206767, September 11, 2019, 919 SCRA 149, 163.

[57] *Id.*

[58] 298 Phil. 88 (1993).

[59] 617 Phil. 997 (2009).

[60] 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. XVIII, 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.

[61] 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, 2022.

[62] See p. 1 of this Opinion.

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