EN BANC

G.R. No. 254208 – PEOPLE OF THE PHILIPPINES, *appellee*, ***versus*** **MA. DEL PILAR ROSARIO C. CASA A.K.A. "MARFY CALUMPANG," "MADAM," "MAH-MAH,"** *accused-appellant.*

Promulgated:

August 16, 2022

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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

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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.

proved."[4] Thus, borrowing the words of the Court in *Republic v. Cayanan*,[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

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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).

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.

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12 Id.
13 Id. at 589.
14 839 Phil. 598 (2018).
15 Id. at 614-615.

> With this bill, Mr. Speaker, we intend to decrease the number in your possession of drugs so that you will be unbailable – 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:

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

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

(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;
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> (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;
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> (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
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> (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-*provisos* 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 case 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

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18 *Immediately*, BLACK'S LAW DICTIONARY (Revised 4th ed. 1968), p. 884.
19 229 Phil. 81 (1986).
20 Id. at 87-88.

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)

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

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

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> 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.

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

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25 *People v. Lim*, supra note 14, at 668-669.
26 769 Phil. 872 (2015).
27 822 Phil. 885 (2017).
28 Id. at 903.

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:
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> > 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.
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> > 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

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29 *People v. Lim*, supra note 14, at 618-619.
30 Id. at 620.
31 See *ponencia*, pp. 16-20.
32 Id. at 16.

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]

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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.

> "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

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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).

> 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

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42 *Ponencia*, p. 23.

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

44 Id. at Introduction, par. 1.1.

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

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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.

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.

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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.

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.
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> 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

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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>.

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.
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> 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

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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>.

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:

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58 *Philippine American Life Insurance Co. v. Santamaria*, 142 Phil. 687, 694 (1970).
59 836 Phil. 888 (2018).

> 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*:

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60 Id. at 901.
61 654 Phil. 461 (2011).
62 Id. at 466.
63 Supra note 60, at 902.

> 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.

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

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