EN BANC

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

Promulgated:

November 29, 2022

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CONCURRING OPINION

CAGUIOA, *J.*:

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

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

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

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[1] *Ponencia*, p. 6.

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

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

Chain of custody as a manner of authentication of real evidence

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

"To authenticate the object, there must be someone who should identify the object to be the actual thing involved in the litigation x x x [because] [a]n object evidence, being inanimate, cannot speak for itself. It cannot present itself to the court as an exhibit."[5] In *Mallillin v. People*[6] (*Mallillin*), the Court said:

> As a **method of authenticating evidence**, the chain of custody rule requires that **the admission of an exhibit be preceded by evidence sufficient to support a finding that the matter in question is what the proponent claims it to be.** It would include testimony about every link in the chain, from the moment the item was picked up to the time it is offered into evidence, in such a way that every person who touched the exhibit would describe how and from whom it was received, where it was and what happened to it while in the witness' possession, the condition in which it was received and the condition in which it was delivered to the next link in the chain. These witnesses would then describe the precautions taken to ensure that there had been no change in the condition of the item and no opportunity for someone not in the chain to have possession of the same.[7] (Emphasis and underscoring supplied)

This is a rule imported from the Federal Rules of Evidence (Rule 901), "which requires that the admission of an exhibit must be preceded by 'evidence sufficient to support a finding that the matter in question is what its proponent claims.'"[8] Proving chain of custody is therefore a requirement

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

whenever object evidence is material in criminal cases, and not just in proving the authenticity of dangerous drugs. Chain of custody, for instance, is a relevant issue in cases involving illegal possession of firearms.[9]

The requirement of chain of custody, however, finds more substantial significance in cases involving dangerous drugs because a "unique characteristic of narcotic substances is that they are not readily identifiable as in fact they are subject to scientific analysis to determine their composition and nature."[10] In the classification of object evidence, narcotics are considered "non-unique objects," as opposed to unique objects which have readily identifiable characteristics, like a firearm which has a serial number.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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[16] 736 Phil. 749 (2014).

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

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

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

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

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

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

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

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

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

Nature of dangerous drugs and buy-bust operations

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

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19 *Ponencia*, p. 6.

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

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

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

23 Id.

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

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

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

> At the same time, we cannot close our eyes to the many reports of evidence being planted on unwary persons either for extorting money or exacting personal vengeance. By the very nature of anti-narcotics operations, the need for entrapment procedures, the use of shady characters as informants, the ease with which sticks of marijuana or grams of heroin can be planted in pockets or hands of unsuspecting provincial hicks, and the secrecy that inevitably shrouds all drug deals, the possibility of abuse is great. <u>Courts must also be extra vigilant in trying drug charges lest an innocent person is made to suffer the unusually severe penalties for drug offenses.</u>[26] (Underscoring supplied)

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

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

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

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

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

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

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

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

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

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

31 Id.

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

33 234 Phil. 267 (1987).

34 Id. at 273.

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

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

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

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

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

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

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

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

Final Note

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

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

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

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

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

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

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

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

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

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

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

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

> It must be alleged and proved that the presence of the three witnesses to the physical inventory and photograph of the illegal drug seized was not obtained due to reason/s such as:
>
> > (1) their attendance was impossible because the place of arrest was a remote area; (2) **their safety during the inventory and photograph of the seized drugs was threatened by an immediate retaliatory action of the accused or any person/s acting for and in his/her behalf;** (3) the elected official themselves were involved in the punishable acts sought to be apprehended; (4) earnest efforts to secure the presence of a DOJ or media representative and an elected public official within the period required under Article 125 of the Revised Penal Code prove futile through no fault of the arresting officers, who face the threat of being charged with arbitrary detention; or (5) time constraints and urgency of the anti-drug operations, which often rely on tips of confidential assets, prevented the law enforcers from obtaining the presence of the required witnesses even before the offenders could escape.[50] (Emphasis supplied)

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

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

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

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