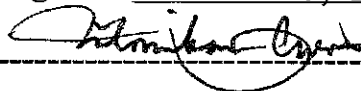


EN BANC

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

Promulgated: November 29, 2022



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CONCURRING OPINION

GESMUNDO, C.J.:

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

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

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

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

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<sup>1</sup> *Ponencia* in G.R. No. 250927, p. 2.



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

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

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

x x x *Provided*, That the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures. xxx

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

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

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<sup>2</sup> G.R. No. 254208, August 16, 2022 [Per C.J. Gesmundo, En Banc].

<sup>3</sup> *Id.* at 13.

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

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

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

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

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

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<sup>4</sup> *Supra*.

<sup>5</sup> *Id.* at 20.

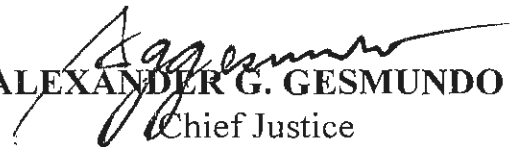
<sup>6</sup> *Malaria Employees and Workers Association of the Philippines, Inc. v. Romulo*, 555 Phil. 629, 639 (2007). [Per C.J. Puno, First Division].

<sup>7</sup> *Supra* note 1, at 6.

<sup>8</sup> *Supra*.

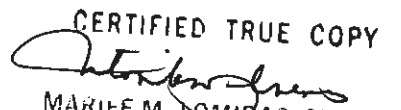
chain of custody rule. It strikes a harmonious balance between the intent of the law in protecting the accused against the planting and switching of dangerous drugs immediately after their purported seizure, and the equally significant intent to efficiently facilitate the conduct of the inventory of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

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

  
**ALEXANDER G. GESMUNDO**  
Chief Justice

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<sup>9</sup> Id. at 25.

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