EN BANC

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

Promulgated:

November 29, 2022

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CONCURRING AND DISSENTING OPINION

KHO, JR. *J.*:

I concur in the result.

I.

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

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

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

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1 Entitled "AN ACT INSTITUTING THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002, REPEALING REPUBLIC ACT NO. 6425, OTHERWISE KNOWN AS THE DANGEROUS DRUGS ACT OF 1972, AS AMENDED, PROVIDING FUNDS THEREFORE, AND FOR OTHER PURPOSES," approved on June 7, 2002.

2 *Ponencia*, p. 7.

3 Id.

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

II.

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

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

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

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

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

6 Id. at 6.

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

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

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

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

III.

First Link of the Chain of Custody Rule

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

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

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

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

> Section 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment.* – The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:
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> (1) The apprehending team having initial custody and control of the dangerous drugs, controlled precursors and essential chemicals, instruments/paraphernalia and/or laboratory equipment shall, immediately after seizure and confiscation, conduct a physical inventory of the seized items and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, with an elected public official and a representative of the National Prosecution Service or the media who shall be required to sign the copies of the inventory and be given a copy thereof: *Provided,* That the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures: *Provided, finally,* That noncompliance of these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures and custody over said items. (underscoring supplied)

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

I shall flesh out the intricacies of these components below.

IV.

Seizure and Marking

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

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

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

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

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

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

Therefore, petitioner should be acquitted.

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

V.

Conduct of Inventory and Taking of Photographs

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

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

I cannot agree.

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

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

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

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

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

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

Section 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/ Paraphernalia and/or Laboratory Equipment.* – x x x (1) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice, and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof;	Section 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/ Paraphernalia and/or Laboratory Equipment.* – x x x (1) The apprehending team having initial custody and control of the dangerous drugs, controlled precursors and essential chemicals, instruments/paraphernalia and/or laboratory equipment shall, immediately after seizure and confiscation, conduct a physical inventory of the seized items and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, with an elected public official and a representative of the National Prosecution Service or the media who shall be required to sign the copies of the inventory and be given a copy thereof: *Provided*, That the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures: *Provided, finally*, That noncompliance of these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures and custody over said items.

Section 21 of RA 9165 in the original reads:

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

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

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

> (1) The apprehending team having initial custody and control of the dangerous drugs, controlled precursors and essential chemicals, instruments/paraphernalia and/or laboratory equipment **shall, immediately after seizure and confiscation, conduct a physical inventory of the seized items and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, with an elected public official and a representative of the National Prosecution Service or the media** who shall be required to sign the copies of the inventory and be given a copy thereof: : ***Provided,* That the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures:** *Provided, finally,* That noncompliance of these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures and custody over said items. (Emphasis and underscoring supplied)

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

The two (2) new provisos are:

a. "***Provided***, that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures" (the "First *Proviso*"); and

b. "***Provided, further***, that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures and custody over said items" (the "Second *Proviso*" or the "Saving Clause").

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

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

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

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

> Section 21. *Custody and Disposition of Confiscated, Seized and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/ Paraphernalia and/or Laboratory Equipment.* – x x x
>
> (a) The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof: ***Provided***, that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; ***Provided, further***, that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items;
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> x x x x (emphasis and underscoring supplied)

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

18 Section 94 of RA 9165 reads:

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

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

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

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

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

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

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

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

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

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[21] Supra note 5.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

VI.

Witnesses Requirement

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

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

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

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

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

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

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

VII.

Accused Not Required to Sign the Inventory Sheet

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

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

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

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

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

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

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

> (1) The apprehending team having initial custody and control of the dangerous drugs, controlled precursors and essential chemicals, instruments/paraphernalia and/or laboratory equipment shall, immediately after seizure and confiscation, conduct a physical inventory of the seized items and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, ***with*** **an elected public official and a representative of the National Prosecution Service or the media who shall be required to sign the copies of the inventory and be given a copy thereof.** x x x. (emphasis and underscoring supplied)

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

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

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

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

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

VIII.

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

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

> "*Provided, further*, that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures and custody over said items."

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

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

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

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

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

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

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

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

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

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

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

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

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37 Id.

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

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

40 Id.

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

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

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

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

IX.

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

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

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

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

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

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

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

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

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

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

c. **With whom:** In the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ANTONIO T. KHO, JR.
Associate Justice

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

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