

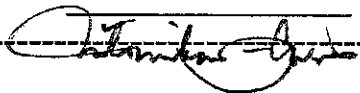
EN BANC

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

Promulgated:

November 29, 2022

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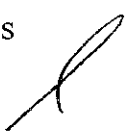


SEPARATE OPINION

LEONEN, J.:

I concur with Associate Justice Ricardo R. Rosario’s *ponencia* that Mario Nisperos y Padilla (Nisperos) must be acquitted on the ground of the prosecution’s failure to prove beyond reasonable doubt that he is guilty of illegal sale of drugs. However, I write separately to expound on certain points with which I differ from the *ponencia*. It is important that I articulate these matters for although they do not affect the specific outcome of this case, the principles espoused by jurisprudence as to what is sufficient compliance with the law provides clear and definite guidelines on the proper conduct of law enforcement operations.

I maintain that the requirements laid down by law, specifically the chain of custody in Republic Act No. 9165, as well as by jurisprudence, must be strictly adhered to during the conduct of buy-bust operations. These stringent requirements, including the presence of insulating witnesses at the time of arrest or seizure that is well established in jurisprudence,<sup>1</sup> are imposed to preserve the constitutional rights of all citizens, especially those who stand to suffer from the State’s use of legitimate force.<sup>2</sup> The calibration of the requirements of Section 21 of Republic Act No. 9165, as amended by Republic Act No. 10640, is vital in balancing the need for effective prosecution of those involved in illegal drugs while preserving the people’s enjoyment of the most basic liberties.<sup>3</sup>



<sup>1</sup> *People v. Mendoza*, 736 Phil. 749 (2014) [Per J. Bersamin, First Division]; *People v. Bintaib*, 829 Phil. 13 (2018) [Per J. Martires, Third Division]; *People v. Sood*, 832 Phil. 850 (2018) [Per J. Caguioa, Second Division]; *People v. Tampan*, G.R. No. 222648, February 13, 2019 [Per J. J. Reyes, Jr., Second Division]; *People v. Dela Torre*, G.R. No. 238519, June 26, 2019 [Per J. Peralta, Third Division]; *People v. Bahoyo*, G.R. No. 238589, June 26, 2019 [Per J. A. Reyes, Jr., Third Division]; *People v. Advincula*, G.R. No. 201576, July 22, 2019 [Per J. Carandang, First Division]; *Abilla v. People*, G.R. No. 227676, April 3, 2019 [Per J. Caguioa, Second Division]; *People v. Martin*, G.R. No. 233750, June 10, 2019 [Per J. A. Reyes, Jr., Third Division]; *People v. Angeles*, G.R. No. 224223, November 20, 2019 [Per J. Inting, Second Division]; *People v. Sta. Cruz*, G.R. No. 244256, November 25, 2019 [Per J. J. Reyes, Jr. First Division]; *Luna v. People*, G.R. No. 231902, June 30, 2021 [Per J. Caguioa, First Division]; *Pagal v. People*, G.R. No. 251894, March 2, 2022 [Per J. Leonen, Third Division].

<sup>2</sup> *People v. Que*, 824 Phil. 882, 885 (2018) [Per. J. Leonen, Third Division]; and *People v. Sumilip*, G.R. No. 223712, September 11, 2019 [Per. J. Leonen, Special First Division].

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

Strict adherence to the chain of custody rule ensures the integrity of the allegedly seized items and thus, renders them trustworthy. Failure to observe the stringent requirements of the chain of custody rule puts reasonable doubt on the guilt of the accused, as it also means that the prosecution was not able to establish the *corpus delicti*. However, jurisprudence has recognized that in some cases, strict compliance with the rule is impracticable, which gives leeway for deviations, but only on the strictest and most exceptional grounds. In addition, the prosecution must also state and prove the twin requirements of: (a) justifiable ground for noncompliance; and (b) assurance that the integrity and evidentiary value of the seized items are properly preserved. Law enforcement agents bear the burden of declaring and demonstrating the “concrete steps” they have taken to guarantee the “integrity and evidentiary value of the items allegedly seized” as well as the “specific reasons impelling them to deviate from the law.”<sup>4</sup>

Finally, I emphasize that our courts must exercise “heightened scrutiny, consistent with the requirement of proof beyond reasonable doubt, in evaluating cases involving min[u]scale amounts of drugs”<sup>5</sup> for such face the greatest risk of planting and tampering of evidence.<sup>6</sup> I repeat that it is about time that our law enforcers exert more effort in going after the real drug syndicates that wreak havoc in our country instead of spending valuable resources on “orchestrated or poorly built up drug-related cases”<sup>7</sup> that do nothing but “alienate our people, enable corrupt law enforcers, and undermine the confidence of our people—especially those who are impoverished and underprivileged—on our court’s ability to do justice.”<sup>8</sup>

## I

In a September 18, 2015 Information, Nisperos was charged with violation of Section 5 of Republic Act No. 9165.<sup>9</sup> Upon arraignment, he entered a plea of not guilty to the offense charged. Then, trial ensued.<sup>10</sup>

On March 13, 2018, the Regional Trial Court found Nisperos guilty beyond reasonable doubt of the offense charged and sentenced him to suffer life imprisonment and to pay a fine of ₱500,000.00. It subsequently denied his Motion for Reconsideration.<sup>11</sup>

<sup>4</sup> *People v. Abdulah*, G.R. No. 243941, March 11, 2020 [Per J. Leonen, Third Division].

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

<sup>6</sup> *Id.*

<sup>7</sup> *People v. Comoso*, G.R. No. 227497, April 10, 2019 [Per J. Leonen, Third Division] citing *People v. Lim*, 839 Phil. 598 (2018) [Per J. Peralta, *En Banc*].

<sup>8</sup> *People v. Suating*, G.R. No. 220142, January 29, 2020 [Per J. Leonen, Third Division].

<sup>9</sup> *Ponencia*, p. 2.

<sup>10</sup> *Id.* at 3.

<sup>11</sup> *Id.*

On June 29, 2018, the Court of Appeals affirmed his conviction with modification that he shall not be eligible for parole. It also denied his Motion for Reconsideration.<sup>12</sup>

Hence, Nisperos filed a Petition for Review on *Certiorari* before this Court. In sum, petitioner argues that the apprehending team failed to strictly follow the chain of custody rule.<sup>13</sup>

I concur with petitioner's acquittal. As aptly discussed in the *ponencia*, while the purported sale transpired at 11:30 a.m. of June 30, 2015, the inventory took place only at 12:00 p.m. In this case, without the presence of Department of Justice representative Ferdinand Gangan (Gangan), the inventory could not be conducted. Hence, the chain of custody rule has not been complied with.<sup>14</sup>

Furthermore, Gangan also testified that when he arrived, the seized items were still unmarked and were only marked subsequently.<sup>15</sup> Worse, the prosecution gave no reason to warrant such delay. Thus, I agree with the *ponencia* that since the first link of the chain of custody was not established, there is no chain to speak of. With the belated marking and conduct of the inventory of the seized drugs, the integrity and evidentiary value of the *corpus delicti* are seriously compromised and the acquittal of petitioner is warranted.<sup>16</sup>

The utter disregard in complying with the requisites provided by Section 21 of the Comprehensive Dangerous Drugs Act is apparent in this case. The failure to secure the required witnesses during seizure and inventory and to mark the seized items in the presence of third witnesses cast doubt on the integrity and identity of the alleged illicit drugs. As the "last bulwark of democracy,"<sup>17</sup> this Court cannot sanction violations of the chain of custody requirements.<sup>18</sup> The burden rests upon the prosecution to prove an accused's guilty beyond reasonable doubt.<sup>19</sup> Absent such proof, acquittal must ensue.

However, I maintain that the presence of the three witnesses must be secured not only during the inventory but also during the seizure of the confiscated items. This is because their presence during this crucial time would erase doubt as to the seized items' source, identity, and integrity.<sup>20</sup> The witnesses would be able to testify whether the items taken during the seizure

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<sup>12</sup> *Id.* at 3–4.

<sup>13</sup> *Id.* at 4.

<sup>14</sup> *Id.* at 6.

<sup>15</sup> *Id.* at 3.

<sup>16</sup> *Id.* at 7.

<sup>17</sup> J. Perfecto, Dissenting Opinion in *Ramos v. Commission on Elections*, 80 Phil. 722, 728 (1948) [Per J. Paras, Second Division].

<sup>18</sup> *People v. Banding*, G.R. No. 233470, August 14, 2019 [Per J. Leonen, Third Division].

<sup>19</sup> *Id.*

<sup>20</sup> *People v. Tomawis*, 830 Phil. 385, 405 (2018) [Per J. Caguioa, Second Division].

by the apprehending officer are the same items presented in the court as they would have personal knowledge of what has transpired during the buy-bust operation itself.

## II

The constitutional mandate that no person shall be deprived of life, liberty, or property without due process of law<sup>21</sup> remains solemn and inflexible.<sup>22</sup> This Court has emphasized that “absolute heedfulness of this constitutional injunction is most pronounced in criminal cases where the accused is in the gravest jeopardy of losing their life.”<sup>23</sup> Hence, every court must proceed with utmost care with each case presented before it, most especially “when the possible punishment is in its severest form—death—a penalty that once carried out, is irreversible and irreparable.”<sup>24</sup>

In a criminal prosecution, much, if not all, is at stake for the accused. Upon conviction, a person is stigmatized and deprived of liberty, and if capital punishment is imposed, life is forever lost.<sup>25</sup> Hence, in any just and humane society which values the good name and freedom of each individual, it is important that a person shall not be condemned for committing a crime when there is reasonable doubt of their guilt.<sup>26</sup> Thus, the due process clause mandates that no person shall lose their liberty, or in grave instances—their life—unless the government has overcome the burden of convincing the court of their guilt.<sup>27</sup>

The moral force of criminal law must not be diluted by a standard of proof that leaves people doubting whether the innocent are being condemned. Such is essential in a society that values freedom, where individuals can go about their daily affairs with confidence that their government cannot adjudge them guilty of a criminal offense without convincing the court of their guilt with moral certainty.<sup>28</sup>

Hence, convictions in criminal actions require proof beyond reasonable doubt.<sup>29</sup> Rule 133, Section 2 of the Rules of Court spells out this requisite quantum of proof:

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<sup>21</sup> CONST., art. III, sec. 1.

<sup>22</sup> *People v. Alcalde*, 432 Phil. 366, 381 (2002) [Per J. Davide, Jr., *En Banc*].

<sup>23</sup> *Id.*

<sup>24</sup> *People v. Tizon*, 375 Phil. 1096, 1102 (1999) [Per J. Vitug, *En Banc*].

<sup>25</sup> *People v. Garcia*, 289 Phil. 819, 831 (1992) [Per J. Davide, Jr., Third Division].

<sup>26</sup> *Id.* at 831–832, citing *In Re Winship*, 397 U.S. 358, 90 S. Ct. 1068, 25 L.E. 2d, excerpted from LEWIS AND PEOPLES, *THE SUPREME COURT AND THE CRIMINAL PROCESS* 712 (1978).

<sup>27</sup> *Id.*

<sup>28</sup> *People v. Morales*, 630 Phil. 215, 218–219 (2010) [Per J. Del Castillo, Second Division], citing *In Re Winship*, 397 U.S. 358, 90 S. Ct. 1068 (1970).

<sup>29</sup> *People v. Que*, 824 Phil. 882, 891 (2018) [Per J. Leonen, Third Division].

Section 2. *Proof beyond reasonable doubt.* — In a criminal case, the accused is entitled to an acquittal, unless his or her guilt is shown beyond reasonable doubt. Proof beyond reasonable doubt does not mean such a degree of proof as, excluding possibility of error, produces absolute certainty. Moral certainty only is required, or that degree of proof which produces conviction in an unprejudiced mind.

To emphasize, “[p]roof beyond reasonable doubt is ultimately a matter of conscience.”<sup>30</sup> It does not mean proof beyond all “possible or imaginary doubt.”<sup>31</sup> Rather, it means a certainty that convinces and satisfies both reason and conscience, after duly taking into account every circumstance favoring the defendant’s innocence, that they are responsible for the offense charged, and not only did they perpetrate the act, but such act amounted to a crime.<sup>32</sup> Such is the immensity of the responsibility that the prosecution must bear.

It is not sufficient that the prosecution only establishes a probability, no matter how strong.<sup>33</sup> Rather, it is necessary for the prosecution to lay before the court the relevant facts and evidence, “to the end that the court’s mind may not be tortured by doubts, that the innocent may not suffer and the guilty not escape unpunished.”<sup>34</sup> This is the “prosecution’s prime duty to the court, to the accused, and the [S]tate.”<sup>35</sup>

The prosecution’s duty arises from a constitutional mandate and finds basis both in the due process clause<sup>36</sup> and the presumption of innocence<sup>37</sup> of the accused.<sup>38</sup> As this Court ruled in *People v. Ganguso*:<sup>39</sup>

An accused has in his favor the presumption of innocence which the Bill of Rights guarantees. Unless his guilt is shown beyond reasonable doubt, he must be acquitted. This reasonable doubt standard is demanded by the due process clause of the Constitution which protects the accused from conviction except upon proof beyond reasonable doubt of every fact necessary to constitute the crime with which he is charged. The burden of proof is on the prosecution, and unless it discharges that burden the accused

<sup>30</sup> *People v. Comoso*, G.R. No. 227497, April 10, 2019 [Per J. Leonen, Third Division].

<sup>31</sup> *U.S. v. Reyes*, 3 Phil. 3, 5–6 (1903) [Per J. Johnson, *En Banc*].

<sup>32</sup> *People v. Cui, Jr.*, 245 Phil. 196, 205–206 (1988) [Per J. Padilla, Second Division].

<sup>33</sup> *U.S. v. Reyes*, 3 Phil. 3, 6 (1903) [Per J. Johnson, *En Banc*].

<sup>34</sup> *People v. Esquivel*, 82 Phil. 453, 459 (1948) [Per J. Tuason, *En Banc*].

<sup>35</sup> *Id.*

<sup>36</sup> Article III, Section 1 of the Constitution provides:

SECTION 1. No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.

<sup>37</sup> Article III, Section 14(2) of the Constitution provides:

(2) In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy, impartial, and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf. However, after arraignment, trial may proceed notwithstanding the absence of the accused provided that he has been duly notified and his failure to appear is unjustifiable.

<sup>38</sup> *Palencia v. People*, G.R. No. 219560, July 1, 2020 [Per J. Leonen, Third Division].

<sup>39</sup> 320 Phil. 324 (1995) [Per J. Davide, Jr., First Division].

need not even offer evidence in his behalf, and he would be entitled to an acquittal.<sup>40</sup> (Citations omitted)

Thus, to secure a conviction in a criminal case, the prosecution must prove the guilt of an accused beyond reasonable doubt which requires that every fact essential to the commission of the crime be established.<sup>41</sup>

### III

In cases involving illicit narcotics, this Court has laid down the elements of illegal sale and illegal possession:

Material to a prosecution for illegal sale of dangerous drugs is the proof that the transaction or sale actually took place, coupled with the presentation in court of the *corpus delicti* as evidence.<sup>42</sup>

In illegal possession of dangerous drugs, the elements are: (1) the accused is in possession of an item or object which is identified to be a prohibited drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the said drug.<sup>43</sup>

In both instances, “the illicit drugs confiscated from the accused comprise the *corpus delicti* of the charges.”<sup>44</sup> *Corpus delicti* is defined as “the body or substance of the crime, and establishes the fact that a crime has actually been committed.”<sup>45</sup> Its elements include proof that a certain act was committed and that a person is criminally responsible for the act.<sup>46</sup>

Thus, their identity and integrity must be established beyond reasonable doubt.<sup>47</sup> It is the prosecution's duty “to ensure that the illegal drugs offered in court are the very same items seized from the accused.”<sup>48</sup> Proof beyond reasonable doubt in these cases demands an “unwavering exactitude that the dangerous drug presented in court as evidence against the accused is the same as that seized from him in the first place.”<sup>49</sup>

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<sup>40</sup> Id. at 335.

<sup>41</sup> *People v. Pagaduan*, 641 Phil. 432, 447 (2010) [Per J. Brion, Third Division].

<sup>42</sup> *People v. Boco*, 368 Phil. 341, 356 (1999) [Per J. Panganiban, *En Banc*]; and *People v. San Juan*, 427 Phil. 236, 242 (2002) [Per J. Buena, Second Division].

<sup>43</sup> *People v. Khor*, 366 Phil. 762, 795 (1999) [Per J. Gonzaga-Reyes, Third Division].

<sup>44</sup> *People v. Sagana*, 815 Phil. 356, 367 (2017) [Per J. Leonen, Second Division], citing *People v. Ismael*, 806 Phil. 21 (2017) [Per J. Del Castillo, First Division].

<sup>45</sup> *People v. Monte*, 455 Phil. 720, 727 (2003) [Per J. Ynares-Santiago, First Division] citing *People v. Oliva*, 395 Phil. 265, 275 (2000) [Per J. Pardo, First Division].

<sup>46</sup> Id. at 727–728, citing *People v. Boco*, 368 Phil. 341 (1999) [Per J. Panganiban, *En Banc*].

<sup>47</sup> *People v. Castillo*, G.R. No. 238339, August 7, 2019 [Per J. Leonen, Third Division]; *Evardo v. People*, G.R. No. 234317, May 10, 2021 [Per J. Leonen, Third Division].

<sup>48</sup> *People v. Saunar*, 816 Phil. 482, 491 (2017) [Per J. Leonen, Second Division].

<sup>49</sup> *Caturan v. People*, 605 Phil. 646, 655 (2009) [Per J. Tinga, Second Division] citing RONALD J. ALLEN AND RICHARD B. KUHNS, AN ANALYTICAL APPROACH TO EVIDENCE 174 (1989).

Such strict requirements is demanded due to the nature of illegal drugs. Illegal drugs are fungible things<sup>50</sup>—indistinct and not readily identifiable.<sup>51</sup> Because of this, the legislature saw it fit to establish a chain of custody rule specific to cases involving dangerous drugs.<sup>52</sup> It requires strict compliance with an exacting standard that entails a chain of custody of the item with sufficient completeness that would make it highly unlikely, if not impossible, for the original item to be exchanged, contaminated, or tampered with.<sup>53</sup>

Hence, to establish the requisite identity of the dangerous drug, the prosecution must be able to account for each link in the chain of custody from the moment the drug is seized, up to its presentation in court as evidence.<sup>54</sup> It is in this context that we emphasize the essence of the chain of custody requirements under Section 21, Article II of Republic Act No. 9165, as amended by Republic Act No. 10640.

#### IV

The law provides the procedural safeguards that must be observed in the handling of seized illegal drugs to remove all doubts concerning the identity and integrity of the *corpus delicti*.<sup>55</sup> Strict compliance with the prescribed procedure must be observed in every single case.<sup>56</sup> Section 21 of Republic Act No. 9165, as amended by Republic Act No. 10640, provides the requirements for the custody and disposition of confiscated, seized, and/or surrendered drugs and/or drug paraphernalia:

SECTION 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment.* – The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

- (1) The apprehending team having initial custody and control of the dangerous drugs, controlled precursors and essential chemicals, instruments/paraphernalia and/or laboratory equipment shall, immediately after seizure and confiscation, conduct a physical inventory of the seized items and photograph the same in the presence of the accused or the persons from whom such items were confiscated and/or seized, or his/her representative or counsel, with an elected

<sup>50</sup> *People v. O’Cochlain*, G.R. No. 229071, December 10, 2018 [Per J. Peralta, Third Division], p. 29. This refers to the pinpoint citation of the Decision uploaded in the Supreme Court website.

<sup>51</sup> *People v. Pagaduan*, 641 Phil. 432, 444 (2010) [Per J. Brion, Third Division]. See also *People v. Garcia*, 599 Phil. 416 (2009) [Per J. Brion, Second Division].

<sup>52</sup> J. Caguioa, Concurring Opinion in *People v. Veloo*, G.R. No. 252154, March 24, 2021 [Per J. Peralta, First Division].

<sup>53</sup> *Mallillin v. People*, 576 Phil. 576, 589 (2008) [Per J. Tinga, Second Division].

<sup>54</sup> *People v. Lopez*, G.R. No. 247974, July 13, 2020 [Per J. Caguioa, First Division].

<sup>55</sup> *People v. De Guzman*, 825 Phil. 43, 54 (2018) [Per J. Del Castillo, First Division].

<sup>56</sup> *Id.* at 54–55.

public official and a representative of the National Prosecution Service or the media who shall be required to sign the copies of the inventory and be given a copy thereof: *Provided*, That the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures: *Provided, finally*, That noncompliance of these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures and custody over said items.

- (2) Within twenty-four (24) hours upon confiscation/seizure of dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment, the same shall be submitted to the PDEA Forensic Laboratory for a qualitative and quantitative examination;
- (3) A certification of the forensic laboratory examination results, which shall be done by the forensic laboratory examiner, shall be issued immediately upon the receipt of the subject item/s: *Provided*, That when the volume of dangerous drugs, plant sources of dangerous drugs, and controlled precursors and essential chemicals does not allow the completion of testing within the time frame, a partial laboratory examination report shall be provisionally issued stating therein the quantities of dangerous drugs still to be examined by the forensic laboratory: *Provided, however*, That a final certification shall be issued immediately upon completion of the said examination and certification[.]

In *Mallillin v. People*,<sup>57</sup> this Court exhaustively explained the chain of custody rule and what is considered sufficient compliance with the rule:

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.<sup>58</sup> (Citations omitted)

This ruling has been applied in numerous cases and this Court has consistently recognized that the chain of custody must be sufficiently established in buy-bust situations to ensure the preservation of the identity and integrity of the seized dangerous drugs:<sup>59</sup>

<sup>57</sup> 576 Phil. 576 (2008) [Per J. Tinga, Second Division].

<sup>58</sup> *Id.* at 587.

<sup>59</sup> *Derilo v. People*, 784 Phil. 679, 686 (2016) [Per J. Brion, Second Division].



[F]irst, the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; second, the turnover of the illegal drug seized by the apprehending officer to the investigating officer; third, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and fourth, the turnover and submission of the marked illegal drug seized from the forensic chemist to the court.<sup>60</sup>

To show an unbroken chain of custody, the prosecution's evidence must include testimony about every link in the chain, from the moment the dangerous drug was seized to the time it is offered in court as evidence.<sup>61</sup> "It is from the testimony of every witness who handled the evidence from which a reliable assurance can be derived that the evidence presented in court is one and the same as that seized from the accused."<sup>62</sup>

## V

The first and most crucial step in proving an unbroken chain of custody in drug-related prosecutions is the marking of the seized illicit drugs and other related items, as it is "the starting point in the custodial link that succeeding handlers of [said items] will use as a reference point."<sup>63</sup> While marking does not explicitly form part of the chain of custody requirements under the letter of Section 21, it is indispensable in ensuring that the integrity and identity of the dangerous drugs are preserved.<sup>64</sup> Marking the evidence separates them from the *corpus* of all other similar evidence, therefore preventing intentional or accidental switching, planting, or contamination.<sup>65</sup> As a rule, the inventory and taking of photographs must also be done at the actual place of apprehension.<sup>66</sup>

Hence, this Court has been consistent in ruling that the failure of the police to immediately mark the seized drugs is sufficient to overturn the presumption of regularity in the performance of official duties. Such failure raises reasonable doubt on the authenticity of the *corpus delicti*.<sup>67</sup>

To repeat, the physical inventory and photographing of the evidence must be done immediately after seizure and confiscation in the presence of three witnesses. The first witness is the accused or the person from whom the

<sup>60</sup> *People v. Kamad*, 624 Phil. 289, 304 (2010) [Per J. Brion, Second Division] citing *People v. Garcia*, 599 Phil. 416 (2009) [Per J. Brion, Second Division].

<sup>61</sup> *Derilo v. People*, 784 Phil. 679, 686 (2016) [Per J. Brion, Second Division].

<sup>62</sup> *People v. Veedor, Jr.*, 834 Phil. 88, 99 (2018) [Per J. Del Castillo, First Division] citing *Derilo v. People*, 784 Phil. 679 (2016) [Per J. Brion, Second Division].

<sup>63</sup> *Id.*, citing *People v. Bartolini*, 791 Phil. 626 (2016) [Per J. Carpio, Second Division].

<sup>64</sup> *People v. Castillo*, G.R. No. 238339, August 7, 2019 [Per J. Leonen, Third Division].

<sup>65</sup> *People v. Veedor, Jr.*, 834 Phil. 88, 99–100 (2018) [Per J. Del Castillo, First Division].

<sup>66</sup> *People v. Sumilip*, G.R. No. 223712, September 11, 2019 [Per J. Leonen, Special First Division].

<sup>67</sup> *People v. Veedor, Jr.*, 834 Phil. 88, 100 (2018) [Per J. Del Castillo, First Division], citing *People v. Bartolini*, 791 Phil. 626 (2016) [Per J. Carpio, Second Division].

items were seized, or their representative. The second witness is an elective public official. Lastly, the third witness is a representative from the National Prosecution Service or the media.<sup>68</sup>

This Court has consistently held that the presence of insulating witnesses in the first link is vital.<sup>69</sup> Without the insulating presence of these persons, the possibility of switching, planting, or contamination of the evidence negates the credibility of the seized drug and other confiscated items.<sup>70</sup> The required witnesses must be present right during the apprehension and not only during the subsequent marking, inventory, and taking photographs.<sup>71</sup> Their presence must be secured during the actual seizure of the items as the statutory requirement of conducting the inventory and taking of photographs “immediately after seizure and confiscation” necessarily means that the required witnesses must also be present during the seizure or confiscation.<sup>72</sup>

In *People v. Estabillo*,<sup>73</sup> this Court emphasized that the job of an insulating witness is not to look for white powdery substances which could be dangerous drugs. Rather, the role of the insulating witness is to confirm that the items seized from the appellant are the ones appearing in the inventory and are the same items offered in evidence before the court, regardless of whether they are dangerous drugs or ordinary household items. The insulating witness does not have to guarantee that the items seized from the accused are indeed illegal drugs.<sup>74</sup>

In *Abilla v. People*,<sup>75</sup> this Court held that because the only insulating witness present arrived after the apprehension of the accused, he was unable to witness how the alleged sachets of dangerous drugs were seized. Hence, “his presence did not in any way prevent the possibility that a switching, planting[,] or contamination of the evidence had transpired.”<sup>76</sup>

In *People v. Luna*,<sup>77</sup> the Court explained that the reason for this mandatory imposition is dictated by logic:

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<sup>68</sup> Republic Act No. 10640 (2014), sec. 21(1).

<sup>69</sup> *People v. Bintaib*, 829 Phil. 13, 24 (2018) [Per J. Martires, Third Division].

<sup>70</sup> *People v. Sagana*, 815 Phil. 356, 372–373 (2017) [Per J. Leonen, Second Division]; *People v. Reyes*, 797 Phil. 671, 689 (2016) [Per J. Bersamin, First Division]; *People v. Mendoza*, 736 Phil. 749, 764 (2014) [Per J. Bersamin, First Division]; *People v. Sood*, 832 Phil. 850, 868 (2018) [Per J. Caguioa, Second Division]; *People v. Advincula*, G.R. No. 201576, July 22, 2019 [Per J. Carandang, First Division]; *People v. Sta. Cruz*, G.R. No. 244256, November 25, 2019 [Per J. J. Reyes, Jr. First Division]; and *People v. Que*, 824 Phil. 882, 911 (2018) [Per J. Leonen, Third Division].

<sup>71</sup> *People v. Sumilip*, G.R. No. 223712, September 11, 2019 [Per J. Leonen, Special First Division].

<sup>72</sup> *People v. Que*, 824 Phil. 882, 911 (2018) [Per J. Leonen, Third Division].

<sup>73</sup> G.R. No. 252902, June 16, 2021 [Per J. Lazaro-Javier, Second Division].

<sup>74</sup> Id.

<sup>75</sup> G.R. No. 227676, April 3, 2019 [Per J. Caguioa, Second Division].

<sup>76</sup> Id.

<sup>77</sup> 828 Phil. 671 (2018) [Per J. Caguioa, Second Division].

[T]hese witnesses are presumed to be disinterested third parties insofar as the buy-bust operation is concerned. *Hence, it is at the time of arrest — or at the time of the drugs’ “seizure and confiscation” — that the insulating presence of the witnesses is most needed, as it is their presence at the time of seizure and confiscation that would foreclose the pernicious practice of planting of evidence.*<sup>78</sup> (Emphasis supplied)

If this Court will only require witnesses to be present after the apprehension and seizure, which are the most critical parts in buy-bust operations, their presence will be rendered meaningless. The reason why this Court, in a multitude of cases,<sup>79</sup> declared that the witnesses must also be present at the time and place of arrest or seizure is because it is when they are needed the most. This is because the illegal drugs, the *corpus delicti* of the crime, can be easily planted in the pockets or the hands of its unknowing victims.

As early as 1921, this Court has emphasized that “scrupulous care”<sup>80</sup> should be exercised by the courts to ascertain the guilt of the accused charged with violating provisions of laws prohibiting illegal drugs because it is “extremely easy for [informers] to blackmail or fix the badge of guilt” against the innocent and “[o]nly the constant vigilance of the courts can guard against the danger arising from such abuses.”<sup>81</sup> In *People v. Castillo*:<sup>82</sup>

Having third-party witnesses present only during the subsequent physical inventory and photographing renders the whole requirement of their presence futile. Securing third-party witnesses provides a layer of protection to the integrity of the items seized and forecloses any opportunity for the planting of dangerous drugs. *Having their presence only at a very late stage reduces them to passive automatons, utilized merely to lend hollow legitimacy by belatedly affixing signatures on final inventory documents despite lacking authentic knowledge on the items confronting them. They are then reduced to rubberstamps, oblivious to how the dangers sought to be avoided by their presence may have already transpired.*<sup>83</sup> (Emphasis supplied)

If we were to strictly require the presence of these witnesses only at a very late stage, after the accused has been apprehended or after the items have

<sup>78</sup> Id. at 689.

<sup>79</sup> *People v. Mendoza*, 736 Phil. 749 [Per J. Bersamin, First Division]; *People v. Bintaib*, 829 Phil. 13 (2018) [Per J. Martires, Third Division]; *People v. Sood*, 832 Phil. 850 (2018) [Per J. Caguioa, Second Division]; *People v. Dela Torre*, G.R. No. 238519, June 26, 2019 [Per J. Peralta, Third Division]; *People v. Bahoyo*, G.R. No. 238589, June 26, 2019 [Per J. A. Reyes, Jr., Third Division]; *People v. Advincula*, G.R. No. 201576, July 22, 2019 [Per J. Carandang, First Division]; *People v. Tampan*, G.R. No. 222648, February 13, 2019 [Per J. J. Reyes, Jr., Second Division]; *Abilla v. People*, G.R. No. 227676, April 3, 2019 [Per J. Caguioa, Second Division]; *People v. Martin*, G.R. No. 233750, June 10, 2019 [Per J. A. Reyes, Jr., Third Division]; *People v. Angeles*, G.R. No. 224223, November 20, 2019 [Per J. Inting, Second Division]; *People v. Sta. Cruz*, G.R. No. 244256, November 25, 2019 [Per J. J. Reyes, Jr., First Division]; *Luna v. People*, G.R. No. 231902, June 30, 2021 [Per J. Caguioa, First Division]; *Pagal v. People*, G.R. No. 251894, March 2, 2022 [Per J. Leonen, Third Division].

<sup>80</sup> *U.S. v. Delgado*, 41 Phil. 372, 382 (1921) [Per J. Malcolm, *En Banc*].

<sup>81</sup> Id.

<sup>82</sup> G.R. No. 238339, August 7, 2019 [Per J. Leonen, Third Division]

<sup>83</sup> Id.

been seized, their presence would no longer hold significant value for they would have absolutely no personal knowledge of what has transpired in the most crucial moment when their presence is most important—at the very beginning, when the *corpus delicti*'s very existence is put to the test. For what is of utmost importance in the first link in the chain of custody is not the bare conduct of inventory, nor the mere act of marking or photographing. Rather, it is the certainty that the items allegedly taken from the accused will retain their integrity as they make their way from the accused to the officer effecting the seizure.<sup>84</sup>

For completeness, it is best to discuss the remaining links involved in the chain of custody. The second link involves “the turn-over of the confiscated drugs to the police station, the recording of the incident, and the preparation of the necessary documents such as the request for laboratory examination of the seized drugs.”<sup>85</sup> The second link happens when the seized drugs are transferred from the apprehending officer to the investigating officer.<sup>86</sup> This is because the investigating officer will be the one to conduct the proper investigation and prepare all the documents for the criminal case. Hence, they must have possession of the illegal substance to prepare the documentation.<sup>87</sup>

In *People v. Del Rosario*,<sup>88</sup> this Court held that the lack of information and documentary evidence as to how, at what point, and in what condition were the seized items handed from the apprehending officer to the investigating officer cast doubt on the seized items' source, identity, and integrity and ultimately acquitted the accused due to these lapses in the chain of custody.<sup>89</sup>

The third link involves the delivery of the illicit drugs by the investigating officer to the forensic chemist at the forensic laboratory.<sup>90</sup> The laboratory technician will testify and verify the nature of the substance.<sup>91</sup>

In *Valencia v. People*,<sup>92</sup> this Court has emphasized that the third link should detail who brought the seized *shabu* to the crime laboratory, who received it, and who exercised custody and possession after it was examined and before it was presented in court.<sup>93</sup> Finding that these crucial details were

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<sup>84</sup> *People v. Luna*, 828 Phil. 671, 695 (2018) [Per J. Caguioa, Second Division].

<sup>85</sup> *People v. Villojan, Jr.*, G.R. No. 239635, July 22, 2019 [Per J. Lazaro-Javier, Second Division].

<sup>86</sup> *People v. Dahil*, 750 Phil. 212, 231 (2015) [Per J. Mendoza, Second Division].

<sup>87</sup> *Id.* at 235.

<sup>88</sup> G.R. No. 235658, June 22, 2020 [Per J. Gesmundo, Third Division].

<sup>89</sup> *Id.*

<sup>90</sup> *People v. Nandi*, 639 Phil. 134, 145 (2010) [Per J. Mendoza, Second Division].

<sup>91</sup> *People v. Bangcola*, G.R. No. 237802, March 18, 2019 [Per J. Gesmundo, First Division]; and *People v. Dela Rosa*, 822 Phil. 885, 907 (2017) [Per J. Gesmundo, Third Division].

<sup>92</sup> 725 Phil. 268 (2014) [Per J. Reyes, First Division].

<sup>93</sup> *Id.* at 285.

nowhere to be found in the records, the Court held that there was an unbroken chain of custody and thus acquitted the accused.<sup>94</sup>

Lastly, the fourth link refers to the transfer of the seized drugs from the forensic chemist to the court when such evidence is presented during the criminal case.<sup>95</sup> This Court has held that “it is of paramount necessity that the forensic chemist testifies as to details pertinent to the handling and analysis of the dangerous drug submitted for examination[.]”<sup>96</sup> They must detail when and from whom the illicit drug was received, the identifying labels and objects with it, its description, and its container.<sup>97</sup> They must also identify the method of the analysis used to determine the chemical composition of the involved specimen.<sup>98</sup>

In *People v. Ubungen*,<sup>99</sup> this Court held that absent any testimony regarding the management, storage, and preservation of the illegal drug allegedly seized herein after its qualitative examination, the fourth link in the chain of custody of the said illegal drug could not be reasonably established.<sup>100</sup>

## VI

Strict compliance with the chain of custody rule is essential to ensure that the seized items are the same items brought to court. In *People v. Holgado*,<sup>101</sup> the chain of custody requirements protect the integrity of the *corpus delicti* in four aspects:

[F]irst, the nature of the substances or items seized; second, the quantity (e.g., weight) of the substances or items seized; third, the relation of the substances or items seized to the incident allegedly causing their seizure; and fourth, the relation of the substances or items seized to the person/s alleged to have been in possession of or peddling them.<sup>102</sup>

Conversely, as held in *Pimentel v. People*,<sup>103</sup> the effect of noncompliance with the chain of custody requirements is the failure on the part of the prosecution to establish the identity and integrity of the *corpus delicti* and will lead to the acquittal of the accused for failure to prove their guilt beyond reasonable doubt.<sup>104</sup>

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<sup>94</sup> Id. at 287.

<sup>95</sup> *People v. Kamad*, 624 Phil. 289, 304 (2010) [Per J. Brion, Second Division].

<sup>96</sup> *Largo v. People*, G.R. No. 201293, June 19, 2019 [Per J. Lazaro-Javier, Second Division].

<sup>97</sup> Id.

<sup>98</sup> *People v. Rivera*, G.R. No. 252886, March 15, 2021 [Per J. Perlas-Bernabe, Second Division].

<sup>99</sup> 836 Phil. 888 (2018) [Per J. Martires, Third Division].

<sup>100</sup> Id. at 902.

<sup>101</sup> 741 Phil. 78 (2014) [Per J. Leonen, Third Division].

<sup>102</sup> Id. at 93.

<sup>103</sup> G.R. No. 239772, January 29, 2020 [Per J. Leonen, Third Division].

<sup>104</sup> Id.

Although strict compliance is indeed the expected standard, the law recognizes that there are extraordinary circumstances in which such would not be possible. As long as noncompliance to the rule has justifiable grounds and the integrity and the evidentiary value of the seized items remain properly preserved, the seizures and custody over said items shall not be rendered invalid.<sup>105</sup>

Failure to strictly follow the mandatory requirements under the chain of custody rule must be adequately explained and must be proven as a fact in accordance with the rules of evidence.<sup>106</sup> This requires the officers to clearly state the grounds in their sworn affidavit, coupled with a statement enumerating the steps they took to preserve the integrity of the seized items.<sup>107</sup> The prosecution bears the burden of proving a valid cause for noncompliance and justifying any perceived deviations from what is required by the chain of custody rule.<sup>108</sup> “Otherwise, the requisites under the law would merely be fancy ornaments that may or may not be disregarded by the arresting officers at their own convenience.”<sup>109</sup> As held in *People v. Miranda*:<sup>110</sup>

The Court, however, clarified that under varied field conditions, strict compliance with the requirements of Section 21 of RA 9165 may not always be possible. In fact, the Implementing Rules and Regulations (IRR) of RA 9165 — which is now crystallized into statutory law with the passage of RA 10640 — provide that the said inventory and photography may be conducted at the nearest police station or office of the apprehending team in instances of warrantless seizure, and that non-compliance with the requirements of Section 21 of RA 9165 — under justifiable grounds — will not render void and invalid the seizure and custody over the seized items so long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending officer or team. Tersely put, the failure of the apprehending team to strictly comply with the procedure laid out in Section 21 of RA 9165 and the IRR does not *ipso facto* render the seizure and custody over the items as void and invalid, provided that the prosecution satisfactorily proves that: (a) there is justifiable ground for non-compliance; and (b) the integrity and evidentiary value of the seized items are properly preserved. In *People v. Almorfe*, the Court stressed that for the above-saving clause to apply, the prosecution must explain the reasons behind the procedural lapses, and that the integrity and value of the seized evidence had nonetheless been preserved. Also, in *People v. De Guzman*, it was emphasized that the justifiable ground for non-compliance must be proven as a fact, because the Court cannot presume what these grounds are or that they even exist.<sup>111</sup> (Citations omitted)

In determining whether noncompliance with the strict requirements of Section 21 is justified, this Court has taken into consideration certain

<sup>105</sup> *Id.*

<sup>106</sup> *People v. Sipin*, 833 Phil. 67, 92 (2018) [J. Peralta, Second Division].

<sup>107</sup> *Id.*, citing *People v. Saragena*, 817 Phil. 117 (2017) [Per J. Leonen, Third Division].

<sup>108</sup> *People v. Paz*, 824 Phil. 1025, 1041 (2018) [Per J. Perlas-Bernabe, Second Division]; and *People v. Mamangon*, 824 Phil. 728, 742 (2018) [Per J. Perlas-Bernabe, Second Division].

<sup>109</sup> *Valencia v. People*, 725 Phil. 268, 286 (2014) [Per J. Reyes, First Division].

<sup>110</sup> 824 Phil. 1042 (2018) [Per J. Perlas-Bernabe, Second Division].

<sup>111</sup> *Id.* at 1052–1053.

situations that do not fall within the saving clause of the amended Comprehensive Dangerous Drugs Act.

In *People v. Asaytuno*,<sup>112</sup> this Court held that “the mere assembling of people does not equate to danger that compromises the activities of law enforcers. It does not mean that the arrest site is no longer a viable place for completing necessary procedures.”<sup>113</sup> This Court emphasized that since the buy-bust operation was a “prearranged activity,”<sup>114</sup> the law enforcement team must have adequately prepared for the situations that may occur in a public setting. The police officers are expected to exercise their functions diligently despite being in a public area for they had adequate time to make the necessary preparations. Failure to make such preparations is not an excuse for noncompliance with the strict requirements of the chain of custody rule. Furthermore, the prosecution claimed that the buy-bust team was not able to immediately do the marking at the place of the arrest because the elective official was not present at the site of the arrest. This Court held that such claim underscores their neglect and does not justify failure to comply with Section 21.<sup>115</sup>

In *People v. Ramos*,<sup>116</sup> this Court held that the police officers’ inadequate preparations in buy-bust operations are not justifiable grounds for noncompliance with the chain of custody rule. The apprehending officers are given ample time to prepare and are aware of the strict guidelines of Section 21. Failure to mark the seized drugs immediately because there was no marker or because the required witnesses were absent are the officers’ own fault and are not valid excuses for noncompliance with the chain of custody rule.<sup>117</sup>

In *Sio v. People*,<sup>118</sup> “the failure of police officers to comply with the basic requirements of Section 21, when operations conducted by virtue of search warrants require planning and preparation, means that noncompliance with the requirements is unjustifiable.”<sup>119</sup>

In *People v. Comoso*,<sup>120</sup> this Court held that “the often minuscule amounts of dangerous drugs seized by law enforcement officers compel courts to be more circumspect in the examination of the evidence. Reasonable doubt arises in the prosecution’s narrative when the links in the chain of custody cannot be properly established. There is no guarantee that the evidence had not been tampered with, substituted, or altered.”<sup>121</sup>

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<sup>112</sup> G.R. No. 245972, December 2, 2019 [Per J. Leonen, Third Division].

<sup>113</sup> Id.

<sup>114</sup> Id.

<sup>115</sup> Id.

<sup>116</sup> G.R. No. 225325, August 28, 2019 [Per J. Leonen, Third Division].

<sup>117</sup> Id.

<sup>118</sup> G.R. No. 224935, March 2, 2022 [Per J. Leonen, Third Division].

<sup>119</sup> Id. at 9. This refers to the pinpoint citation of the Decision uploaded in the Supreme Court website.

<sup>120</sup> G.R. No. 227497, April 10, 2019 [Per J. Leonen, Third Division].

<sup>121</sup> Id.

In *People v. Abdulah*,<sup>122</sup> this Court said that flimsy and unsubstantiated claims of unsafe conditions do not meet the requisites imposed to justify noncompliance with the chain of custody rule. Shallow averments of unsafe conditions premised on the profile of a given locality's population reveals indolence, if not bigotry. This Court did not accept the police officers' justification that they were unable to comply with the stringent requirements of Section 21 due to the danger of the location wherein they were situated which they described as a notorious "Muslim area." This Court held that this is not a valid reason for noncompliance with Section 21, and only serves to reinforces outdated stereotypes and blatant prejudices.<sup>123</sup>

In *People v. Macud*,<sup>124</sup> this Court recognized the destructive effects of illicit drugs in our society but emphasized that the effort to eradicate this menace cannot trample on the constitutional rights of individuals, "particularly those at the margins of our society who are prone to abuse at the hands of the armed and uniformed men of the State."<sup>125</sup> This Court held that this case shows how a minuscule amount of 0.08 gram "could have cost a man his liberty for a lifetime due [to] a bungled up buy-bust operation."<sup>126</sup>

The above cases show that this Court, in determining whether noncompliance with the strict requirements of the chain of custody rule is justified, takes into consideration the degree of preparation of the conduct of prearranged activities such as buy-bust operations, the amount of illicit drugs seized from the accused, and the degree of involvement of the accused in the drug trade.

As to the degree of involvement of the accused in the drug trade, this Court has already recognized the death of the person who was involved in the illegal drug trade death as an extralegal killing. This Court has held that the fact that of previous arrest for selling illegal drugs is of no consequence as law enforcement agents are "not at liberty to disregard the respondent's constitutionally guaranteed rights to life, liberty[,] and security."<sup>127</sup> Hence, I emphasize that this Court will not tolerate law enforcement agents who conspire with the accused to conduct their own illicit trade of illegal drugs. Law enforcement operations on illegal drug trade have been recognized by this Court as prone to police abuse and buy-bust operations have been often used as a tool for extortion.<sup>128</sup> This Court will not sit idly when such unlawful dealings occur.

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<sup>122</sup> G.R. No. 243941, March 11, 2020 [Per J. Leonen, Third Division].

<sup>123</sup> Id.

<sup>124</sup> 822 Phil. 1016 (2017) [Per J. Del Castillo, First Division].

<sup>125</sup> Id. at 1042.

<sup>126</sup> Id.

<sup>127</sup> *Tabian v. Gonzales*, G.R. No. 247211, August 1, 2022 [Per J. J. Lopez, Second Division], p. 19. This refers to the pinpoint citation of the Decision uploaded in the Supreme Court website.

<sup>128</sup> *People v. Suating*, G.R. No. 220142, January 29, 2020 [Per J. Leonen, Third Division].



To repeat, strict compliance with the chain of custody rule preserves the identity and integrity of the evidence, but most importantly, safeguards the rights of the accused “whose life and liberty hang[s] in the balance.”<sup>129</sup>

The *ponencia*, in seeking to overturn well-established jurisprudential doctrine espoused in *People v. Tomawis*<sup>130</sup> and *People v. Mendoza*,<sup>131</sup> is confident that the absence of these insulating witnesses does not prevent the court from determining the integrity and evidentiary value of the seized items.<sup>132</sup>

After discussing in great detail each of the requisites in establishing the chain of custody and its corresponding purposes, I maintain that pushing any of these well-established requirements to the sidelines will prevent the courts from determining if the integrity and evidentiary value of the seized items had been properly preserved. This Court has recognized that narcotic substances are not readily identifiable.<sup>133</sup> There is danger that the white powder taken from the accused, the *corpus delicti* of the crime, could be mistaken for illegal drugs even if it could have only been sugar or baking powder.<sup>134</sup> As this Court held in *People v. Que*:<sup>135</sup>

Fidelity to the chain of custody requirements is necessary because, by nature, narcotics may easily be mistaken for everyday objects. Chemical analysis and detection through methods that exceed human sensory perception, such as specially trained canine units and screening devices, are often needed to ascertain the presence of dangerous drugs. The physical similarity of narcotics with everyday objects facilitates their adulteration and substitution. It also makes planting of evidence conducive.<sup>136</sup>

Furthermore, our data reveals that there has been a significant increase in the disposal of drugs cases since the Court’s pronouncement in *People v. Lim*.<sup>137</sup> In 2021, 82.35% of the 260 appealed drugs cases were resolved to acquit the accused.<sup>138</sup> The grounds for such acquittals have been largely due to noncompliance with the chain of custody rule.<sup>139</sup> In 2020, 290 out of the 296 acquittals were due to such noncompliance.<sup>140</sup> Significantly, failure to comply with the witness requirement during seizure or time of apprehension is one of the most common procedural infractions that led to such acquittals.<sup>141</sup>

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<sup>129</sup> *People v. Veedor, Jr.*, 834 Phil. 88, 102 (2018) [Per J. Del Castillo, First Division].

<sup>130</sup> 830 Phil. 385 (2018) [Per J. Caguioa, Second Division].

<sup>131</sup> 736 Phil. 749 (2014) [Per J. Bersamin, First Division].

<sup>132</sup> *Ponencia*, p. 6.

<sup>133</sup> *Mallillin v. People*, 576 Phil. 576, 588–589 (2008) [Per J. Tinga, Second Division].

<sup>134</sup> *Id.*

<sup>135</sup> 824 Phil. 882 (2018) [Per J. Leonen, Third Division].

<sup>136</sup> *Id.* at 896.

<sup>137</sup> *Comparative Analysis of Supreme Court Caseload Statistics for Appealed Drugs Cases* (2022), pp. 2–3.

<sup>138</sup> *Id.*

<sup>139</sup> *Id.* at 3.

<sup>140</sup> *Id.* at 4.

<sup>141</sup> *Id.*

The data shows that this Court has given utmost importance to the significance of the presence of insulating witnesses during arrest or seizure and has consistently held that the absence of such part in the chain of custody is considered as sufficient ground to acquit the accused.

When the item in question is so small or easily replaceable, with physical characteristics that look similar, if not exactly, alike with substances used in everyday life, the most likely it is to be tampered with, lost, or mistaken with something else.<sup>142</sup> The Court must therefore not reluctantly cast its eyes away from the reality of the possibility of substitution, alteration, or contamination of these narcotic substances in buy-bust operations. The absence of the insulating witnesses during the actual arrest and seizure would create a wide gap in the chain of custody, producing doubt as to the legitimacy of the operation and the identity of the seized illegal drugs.<sup>143</sup>

As to the safety and strategic concerns raised by the *ponencia*, I maintain that in every buy-bust operation, police officers set about a meticulously prepared and self-conscious operation.<sup>144</sup> “[B]uy-bust operations, by definition, are preplanned, deliberately arranged[, and] calculated.”<sup>145</sup> Hence, the apprehending team is expected to exercise due diligence in securing preliminaries which include the safety of the required witnesses. Law enforcement agents necessarily possess the competence and skill required to conduct successful buy-bust operations, including securing the presence of witnesses which would ultimately strengthen their case against the accused.

Again, as this Court has pronounced in *Que*, “[t]here is nothing overly complicated, demanding, or difficult in Section 21’s requirements. If at all, these requirements have so repeatedly been harped on in jurisprudence, and almost just as certainly on professional and casual exchanges among police officers, that the buy-bust team must have been so familiar with them.”<sup>146</sup> The specific requirement of the presence of insulating witnesses at the time of arrest or seizure is not complicated. It is not difficult to follow. It may be arguably burdensome to our law enforcers, but such is the price to pay when the liberty and even life of a human being are at stake.

## VII

At this point, I strongly emphasize that this case involves a meager 0.7603 gram of *shabu*<sup>147</sup> which weighs less than half the weight of a small

<sup>142</sup> *People v. Que*, 824 Phil. 882, 897 (2018) [Per J. Leonen, Third Division].

<sup>143</sup> *Pimentel v. People*, G.R. No. 239772, January 29, 2020 [Per J. Leonen, Third Division].

<sup>144</sup> *People v. Que*, 824 Phil. 882, 912 (2018) Per J. Leonen, Third Division].

<sup>145</sup> J. Leonen, Concurring Opinion in *People v. Lim*, G.R. No. 231989, September 4, 2018, [Per J. Peralta, *En Banc*].

<sup>146</sup> 824 Phil. 882, 912 (2018) Per J. Leonen, Third Division].

<sup>147</sup> *Ponencia*, p. 2.

five-centavo coin (1.9 grams). This small amount, although not a basis for acquittal *per se*<sup>148</sup> or a badge of innocence,<sup>149</sup> should impel our police officers to faithfully comply with the law<sup>150</sup> and should compel our courts to strictly scrutinize the evidence presented by the prosecution against the exacting standards imposed by Section 21 of Republic Act No. 9165, as amended.<sup>151</sup> The possibility of abuse in drugs cases which involve small amounts is great as evidence could be easily planted and buy-bust operations could be conveniently initiated based on unfounded claims.<sup>152</sup> In *People v. Tan*,<sup>153</sup> this Court held that:

“[B]y 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.” Thus, the courts have been exhorted to be extra vigilant in trying drug cases lest an innocent person is made to suffer the unusually severe penalties for drug offenses[.]”<sup>154</sup> (Citations omitted)

Hence, in these cases, evidence presented by the prosecution must undergo “severe testing.”<sup>155</sup> There must be stricter compliance with the chain of custody rule and the exercise of a higher level of scrutiny<sup>156</sup> with utmost diligence and prudence.

Furthermore, our data reveals that majority of the cases on sale and possession of dangerous drugs from 2010 to 2021 that reached this Court typically involve *shabu* with amounts that are below one gram.<sup>157</sup> From 2010 to 2021, there has been a steady increase in the number disposed drugs cases appealed to this Court,<sup>158</sup> a significant number of which have been due to the noncompliance of the chain of custody rule.<sup>159</sup> These findings are consistent with this Court’s pronouncements of dismay with the deluge of cases against small-time drug pushers clogging its dockets<sup>160</sup> and its emphasis on ensuring the integrity of seized drugs in the chain of custody when only a minuscule amount of drugs are involved.<sup>161</sup>

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<sup>148</sup> *Palencia v. People*, G.R. No. 219560, July 1, 2020 [Per J. Leonen, Third Division].

<sup>149</sup> *People v. Que*, 824 Phil. 882, 914 (2018) [Per J. Leonen, Third Division].

<sup>150</sup> *People v. Balubal*, 837 Phil. 496, 514 (2018) [Per J. Gesmundo, Third Division].

<sup>151</sup> *People v. Holgado*, 741 Phil. 78, 100 (2014) [Per J. Leonen, Third Division].

<sup>152</sup> *People v. Saragena*, 817 Phil. 117, 143 (2017) [Per J. Leonen, Third Division].

<sup>153</sup> 401 Phil. 259 (2000) [Per J. Melo, Third Division].

<sup>154</sup> *Id.* at 273.

<sup>155</sup> *People v. Saragena*, 817 Phil. 117, 129 (2017) [Per J. Leonen, Third Division].

<sup>156</sup> *People v. Caiz*, 790 Phil. 183, 209 (2016) [Per J. Leonen, Second Division], citing *Mallillin v. People*, 576 Phil. 576, 588 (2008) [Per J. Tinga, Second Division].

<sup>157</sup> *Comparative Analysis of Supreme Court Caseload Statistics for Appealed Drugs Cases* (2022), p. 9.

<sup>158</sup> *Id.* at 2.

<sup>159</sup> *Id.* at 3.

<sup>160</sup> *People v. Lung Wai Tang*, G.R. No. 238517, November 27, 2019 [Per J. Zalameda, Third Division].

<sup>161</sup> *People v. Jaafar*, 803 Phil. 582, 595 (2017) [Per J. Leonen, Second Division].

It is thus imperative to reiterate this Court's ruling in *Holgado*<sup>162</sup> that courts should carefully and conscientiously consider all the factual circumstances in drugs cases, especially those which involve minuscule amounts of dangerous drugs:

It is lamentable that while our dockets are clogged with prosecutions under Republic Act No. 9165 involving small-time drug users and retailers, we are seriously short of prosecutions involving the proverbial "big fish." We are swamped with cases involving small fry who have been arrested for min[u]scale amounts. While they are certainly a bane to our society, small retailers are but low-lying fruits in an exceedingly vast network of drug cartels. Both law enforcers and prosecutors should realize that the more effective and efficient strategy is to focus resources more on the source and true leadership of these nefarious organizations. Otherwise, all these executive and judicial resources expended to attempt to convict an accused for 0.05 gram of shabu under doubtful custodial arrangements will hardly make a dent in the overall picture. It might in fact be distracting our law enforcers from their more challenging task: to uproot the causes of this drug menace. We stand ready to assess cases involving greater amounts of drugs and the leadership of these cartels.<sup>163</sup>

In *Palencia v. People*,<sup>164</sup> this Court has held that every effort on cases involving illicit drugs with quantities that are as little as less than a gram, "wastes law enforcement, prosecution and judicial time."<sup>165</sup> Instead of focusing on the small fry, our law enforcers should step up and exert valuable time, effort, and resources in capturing the big fish—drug kingpins<sup>166</sup> who control the source of illegal drugs which continue to plague our society. This Court is more than ready to take on cases involving drug cartels circulating drugs in massive quantities<sup>167</sup>—not just those which involve amounts so small as to equate to a few grains of rice.

## VIII

As a final note, for each count of unauthorized possession of dangerous drugs or unauthorized sale of dangerous drugs even for the smallest amount, the corresponding penalty under the law is at least 12 years and one day of imprisonment.<sup>168</sup> Strict compliance with the safeguards provided by the law and established by jurisprudence must remain paramount.

If the requisites that insulate the people from wrongful arrests and unjust convictions are dispensed with and labelled as trivial matters, such

<sup>162</sup> 741 Phil. 78 (2014) [Per J. Leonen, Third Division].

<sup>163</sup> *Id.* at 100.

<sup>164</sup> G.R. No. 219560, July 1, 2020 [Per J. Leonen, Third Division].

<sup>165</sup> *Id.*

<sup>166</sup> *Id.*

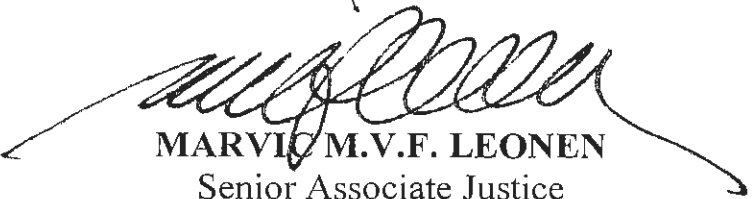
<sup>167</sup> *People v. Lung Wai Tang*, G.R. No. 238517, November 27, 2019 [Per J. Zalameda, Third Division].

<sup>168</sup> Republic Act No. 9165 (2002), sec. 5.

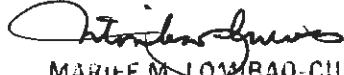
would open the floodgates to rampant abuse by corrupt and immoral law enforcement officers and agents who prey on the weak and the defenseless.

We must never forget that the strength of the barrier which separates the effortless act of planting illegal drugs of minuscule amount into the pockets of innocent people and the severity of the penalties in drugs cases rests in the strict compliance with the chain of custody rule. Without the strict requirements of the chain of custody rule, innocent individuals are exposed to the risk of wrongful conviction and face the gravest jeopardy of losing their liberty, or worse—their lives.

**ACCORDINGLY**, I vote that the Petition be **GRANTED** and the June 29, 2018 Decision and November 7, 2019 Resolution of the Court of Appeals in CA-G.R. CR-HC No. 11472 be **REVERSED** and **SET ASIDE**. Petitioner Mario Nisperos y Padilla must be **ACQUITTED** of the crime charged on the ground of reasonable doubt and be **ORDERED IMMEDIATELY RELEASED** from detention unless he is being lawfully held for another cause.



MARVIC M.V.F. LEONEN  
Senior Associate Justice

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MARIFE M. LOZA-BAO-CUEVAS  
Clerk of Court  
Supreme Court