

**G.R. No. 231989 — PEOPLE OF THE PHILIPPINES, *plaintiff-appellee,*  
*versus* ROMY LIM y MIRANDA, *accused-appellant.***

Promulgated:

September 4, 2018\

x-----x

**SEPARATE CONCURRING OPINION**

**CAGUIOA, J.:**

I concur.

I agree with the *ponencia* that accused-appellant Romy Lim y Miranda (Lim) should be acquitted for failure of the prosecution to establish an unbroken link in the chain of custody of the dangerous drugs supposedly seized from him.

The facts are simple:

On October 19, 2010, at around 8:00 p.m., Intelligence Officer 1 Albert Orellan (IO1 Orellan) and his team were at the Regional Office of the Philippine Drug Enforcement Agency (PDEA) when they received information from a confidential informant (CI) that Lim had engaged in the sale of prohibited drugs in his house at Zone 7, Cabina, Bonbon, Cagayan de Oro City. The team immediately prepared to conduct a buy-bust operation and coordinated with the nearest police station. They then left to conduct the buy-bust operation and reached the target area at around 10:00 p.m., or two hours after they received the information from the CI.

Upon reaching the target area, the poseur-buyer and the CI knocked at the door of Lim's house. Eldie Gorres (Gorres), Lim's stepson, came out and invited them to enter. Inside the house, Lim was sitting on the sofa while watching the television while the supposed sale of *shabu* happened between Gorres and the poseur-buyer. After the supposed consummation of the sale, the police officers barged into the house and arrested Lim and Gorres. The two were then prosecuted for violation of Sections 5 and 11, Article II of Republic Act No. (R.A.) 9165.

At the outset, it is important to stress that jurisprudence is well-settled that in all prosecutions for violation of R.A. 9165, the following elements must be proven beyond reasonable doubt: (1) proof that the transaction took place; and (2) presentation in court of the *corpus delicti* or the illicit drug as evidence. The existence of dangerous drugs is a condition *sine qua non* for



conviction for the illegal sale and possession of dangerous drugs, they being the very *corpus delicti* of the crimes.<sup>1</sup> What is material is the proof that the transaction or sale transpired, coupled with the presentation in court of the *corpus delicti*.<sup>2</sup> *Corpus delicti* is the body or substance of the crime, and establishes the fact that a crime has been actually committed.<sup>3</sup>

In dangerous drugs cases, it is essential in establishing the *corpus delicti* that the procedure provided in Section 21 of R.A. 9165 is followed. The said section provides:

SEC. 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 drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof;

(2) Within twenty-four (24) hours upon confiscation/seizure of dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment, the same shall be submitted to the PDEA Forensic Laboratory for a qualitative and quantitative examination;

(3) A certification of the forensic laboratory examination results, which shall be done under oath by the forensic laboratory examiner, shall be issued within twenty-four (24) hours after the receipt of the subject item/s: *Provided*, That when the volume of the dangerous drugs, plant sources of dangerous drugs, and controlled precursors and essential chemicals does not allow the completion of testing within the time frame, a partial laboratory examination report shall be provisionally issued stating therein the quantities of dangerous drugs still to be examined by the forensic laboratory: *Provided, however*, That a final certification shall be issued on the completed forensic laboratory examination on the same within the next twenty-four (24) hours[.]

Furthermore, Section 21(a), Article II of the Implementing Rules and Regulations of R.A. 9165 (IRR) filled in the details as to where the physical inventory and photographing of the seized items could be done: *i.e.*, at the place of seizure, at the nearest police station or at the nearest office of the apprehending officer/team, thus:

<sup>1</sup> *People v. Magat*, 588 Phil. 395, 402 (2008).

<sup>2</sup> *People v. Dumangay*, 587 Phil. 730, 739 (2008).

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

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

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

Section 21 plainly requires the apprehending team to conduct a physical inventory of the seized items and photograph the same immediately after seizure and confiscation in the presence of the accused, with (1) an elected public official, (2) a representative of the Department of Justice (DOJ), and (3) a representative of the media, all of whom shall be required to sign the copies of the inventory and be given a copy thereof.

In buy-bust situations, or warrantless arrests, the physical inventory and photographing are allowed to be done at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable. But even in these alternative places, such inventory and photographing are still required to be done in the presence of the accused and the aforementioned witnesses.

I submit that the phrase “immediately after seizure and confiscation” means that the physical inventory and photographing of the drugs were intended by the law to be made immediately after, or at the place of apprehension. And only if this is not practicable can the inventory and photographing then be done as soon as the apprehending team reaches the nearest police station or the nearest office. There can be no other meaning to the plain import of this requirement. **By the same token, however, this also means that the required witnesses should already be physically present**



**at the time of apprehension — a requirement that can easily be complied with by the buy-bust team considering that the buy-bust operation is, by its nature, a planned activity.** Simply put, the apprehending team has enough time and opportunity to bring with them said witnesses.

In other words, while the physical inventory and photographing are allowed to be done “at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures,” this does not dispense with the requirement of having all the required witnesses to be physically present at the time or near the place of apprehension. The reason is simple, it is at the time of arrest — or at the time of the drugs’ “seizure and confiscation” — that the presence of the three witnesses is most needed, **as it is their presence at the time of seizure and confiscation that would insulate against the police practice of planting evidence.**

The presence of the witnesses at the place and time of arrest and seizure is required because “[w]hile buy-bust operations deserve judicial sanction if carried out with due regard for constitutional and legal safeguards, it is well to recall that x x x by the very nature of anti-narcotics operations, the need for entrapment procedures x x x the ease with which sticks of marijuana or grams of heroin can be planted in pockets of or hands of unsuspecting provincial hicks, and the secrecy that inevitably shrouds all drug deals, the possibility of abuse is great.”<sup>4</sup>

In this connection, it is well to point out that recent jurisprudence is clear that the **procedure enshrined in Section 21 of R.A. 9165 is a matter of substantive law**, and cannot be brushed aside as a simple procedural technicality; or worse, ignored as an impediment to the conviction of illegal drug suspects.<sup>5</sup> For indeed, however noble the purpose or necessary the exigencies of our campaign against illegal drugs may be, it is still a governmental action that must always be executed within the boundaries of law.

Using the language of the Court in *People v. Mendoza*,<sup>6</sup> without the **insulating presence** of the representative from the media or the DOJ and

<sup>4</sup> *People v. Santos, Jr.*, 562 Phil. 458, 471 (2007).

<sup>5</sup> *People v. Crispo*, G.R. No. 230065, March 14, 2018, p. 11; *People v. Año*, G.R. No. 230070, March 14, 2018, p. 7; *People v. Lumaya*, G.R. No. 231983, March 7, 2018, p. 12; *People v. Ramos*, G.R. No. 233744, February 28, 2018, p. 9; *People v. Manansala*, G.R. No. 229092, February 21, 2018, p. 9; *People v. Guieb*, G.R. No. 233100, February 14, 2018, p. 9; *People v. Paz*, G.R. No. 229512, January 31, 2018, p. 11; *People v. Miranda*, G.R. No. 229671, January 31, 2018, p. 11; *People v. Jugo*, G.R. No. 231792, January 29, 2018, p. 9; *People v. Mamangon*, G.R. No. 229102, January 29, 2018, p. 9; *People v. Calibod*, G.R. No. 230230, November 20, 2017, p. 9; *People v. Ching*, G.R. No. 223556, October 9, 2017, p. 10; *People v. Geronimo*, G.R. No. 225500, September 11, 2017, p. 9; *People v. Macapundag*, G.R. No. 225965, March 13, 2017, 820 SCRA 204, 215; *Gamboa v. People*, 799 Phil. 584, 597 (2016); see also *People v. Dela Victoria*, G.R. No. 233325, April 16, 2018, p. 10; *People v. Bintaib*, G.R. No. 217805, April 2, 2018; *People v. Segundo*, G.R. No. 205614, July 26, 2017, p. 17.

<sup>6</sup> 736 Phil. 749 (2014).



any elected public official during the seizure and marking of the drugs, the evils of switching, “planting” or contamination of the evidence that had tainted the buy-busts conducted under the regime of R.A. 6425 (Dangerous Drugs Act of 1972) again reared their ugly heads as to negate the integrity and credibility of the seizure and confiscation of the subject sachets that were evidence of the *corpus delicti*, and thus adversely affected the trustworthiness of the incrimination of the accused.<sup>7</sup>

Thus, it is compliance with this most fundamental requirement — the presence of the “insulating” witnesses — that the pernicious practice of planting of evidence is greatly minimized if not foreclosed altogether. Stated otherwise, this is the first and foremost requirement provided by Section 21 to ensure the preservation of the “integrity and evidentiary value of the seized drugs” in a buy-bust situation whose nature, as already explained, is that it is a planned operation.

To reiterate, the presence of the three 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 photographing of the seized and confiscated drugs immediately after seizure and confiscation.**

The practice of police operatives of not bringing to the intended place of arrest the representative of the DOJ, the media representative, and the elected public official, when they could easily do so — and “calling them in” to the police station to witness the inventory and photographing of the drugs only after the buy-bust operation has already been finished — does **not** achieve the purpose of the law in having these witnesses prevent or insulate against the planting of drugs. I thus encourage the Court to send a strong message that faithful compliance with this most important requirement — bringing them to a place near the intended place of arrest — should be strictly complied with.

In this regard, showing how the drugs transferred hands from the accused to the poseur-buyer, from the poseur-buyer to the investigator and from the investigator to the crime laboratory — much like in this case — without showing compliance with the inventory and photographing as witnessed by the three required witnesses is not enough to ensure the integrity of the seized drugs. Indeed, without such witnessing, the drugs could already have been planted — and the marking, and the transfer from one to another (as usually testified to by the apprehending officers) only proves the chain of custody of **planted** drugs.

I am not unaware that there is now a saving clause in Section 21, introduced by R.A. 10640, which is the portion that states: “noncompliance

---

<sup>7</sup> Id. at 764.



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.”

The requirements referred to that need not be complied with if there are justifiable grounds are only in respect of the conduct of the physical inventory and the photographing in the presence of the accused, with an elected public official, and a representative of the DOJ, and the media who shall be required to sign the copies of the inventory and be given a copy thereof.

Again, the plain language of this last proviso in Section 21 of R.A. 10640 simply means that the failure of the apprehending officer/team to physically inventory and photograph the drugs at the place of arrest and/or to have the DOJ or media representative and elected public official witness the same can be excused (*i.e.*, these shall not render void and invalid such seizures and custody over said items) so long as there are justifiable grounds for not complying with these requirements **and** “as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team.”

Thus, it has been held that, as a general rule, strict compliance with the requirements of Section 21 is mandatory.<sup>8</sup> The Court may allow noncompliance with the requirement only in exceptional cases,<sup>9</sup> where the following requisites are present: (1) the existence of justifiable grounds to allow departure from the rule on strict compliance; and (2) the integrity and the evidentiary value of the seized items are properly preserved by the apprehending team.<sup>10</sup> If these two elements are present, the seizures and custody over the confiscated items shall not be rendered void and invalid.

It has also been emphasized that for the saving clause to be triggered, the prosecution must first recognize any lapses on the part of the police officers and justify the same.<sup>11</sup> Breaches of the procedure contained in Section 21 committed by the police officers, left unacknowledged and unexplained by the State, militate against a finding of guilt beyond reasonable doubt against the accused as the integrity and evidentiary value of the *corpus delicti* had been compromised.<sup>12</sup>

**In cases involving procedural lapses of the police officers, proving the identity of the *corpus delicti* despite noncompliance with Section 21 requires the saving clause to be successfully triggered.**

---

<sup>8</sup> See *People v. Cayas*, 789 Phil. 70, 79 (2016); *People v. Havana*, 776 Phil. 462, 475 (2016).

<sup>9</sup> See *id.* at 80.

<sup>10</sup> R.A. 9165, Sec. 21(1), as amended by R.A. 10640.

<sup>11</sup> See *People v. Alagarme*, 754 Phil. 449, 461 (2015).

<sup>12</sup> See *People v. Sumili*, 753 Phil. 343, 352 (2015).



**For this purpose, the prosecution must satisfy its two-pronged requirement: first, credibly justify the noncompliance, and second, show that the integrity and evidentiary value of the seized item were properly preserved.**<sup>13</sup> This interpretation on when the saving clause is triggered is not novel. In *Valencia v. People*,<sup>14</sup> the Court held:

Although the Court has ruled that non-compliance with the directives of Section 21, Article II of R.A. No. 9165 is not necessarily fatal to the prosecution's case, the prosecution must still prove that (a) there is a justifiable ground for the non-compliance, and (b) the integrity and evidentiary value of the seized items were properly preserved. Further, the non-compliance with the procedures must be justified by the State's agents themselves. The arresting officers are under obligation, should they be unable to comply with the procedures laid down under Section 21, Article II of R.A. No. 9165, to explain why the procedure was not followed and prove that the reason provided a justifiable ground. 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>15</sup> (Citations omitted)

In the case of *People v. Barte*,<sup>16</sup> the Court pronounced that the State has the duty to credibly explain the noncompliance of the provisions of Section 21:

When there is failure to comply with the requirements for proving the chain of custody in the confiscation of contraband in a drug buy-bust operation, the State has the obligation to credibly explain such noncompliance; otherwise, the proof of the *corpus delicti* is doubtful, and the accused should be acquitted for failure to establish his guilt beyond reasonable doubt.<sup>17</sup>

In *People v. Ismael*,<sup>18</sup> the accused was acquitted because "the prosecution failed to: (1) overcome the presumption of innocence which appellant enjoys; (2) prove the *corpus delicti* of the crime; (3) establish an unbroken chain of custody of the seized drugs; and (4) offer any explanation why the provisions of Section 21, RA 9165 were not complied with."<sup>19</sup>

Likewise, in *People v. Reyes*<sup>20</sup>:

Under the last paragraph of Section 21(a), Article II of the IRR of R.A. No. 9165, a saving mechanism has been provided to ensure that not every case of noncompliance with the procedures for the preservation of the chain of custody will irretrievably prejudice the Prosecution's case

<sup>13</sup> See *People v. Capuno*, 655 Phil. 226, 240-241 (2011); *People v. Garcia*, 599 Phil. 416, 432-433 (2009); *People v. Reyes*, G.R. No. 199271, October 19, 2016, 806 SCRA 513, 536-537.

<sup>14</sup> 725 Phil. 268 (2014),

<sup>15</sup> Id. at 286.

<sup>16</sup> G.R. No. 179749, March 1, 2017, 819 SCRA 10.

<sup>17</sup> Id. at 13.

<sup>18</sup> G.R. No. 208093, February 20, 2017, 818 SCRA 122.

<sup>19</sup> Id. at 142; underscoring supplied.

<sup>20</sup> Supra note 13.



against the accused. **To warrant the application of this saving mechanism, however, the Prosecution must recognize the lapse or lapses, and justify or explain them. Such justification or explanation would be the basis for applying the saving mechanism.** Yet, the Prosecution did not concede such lapses, and did not even tender any token justification or explanation for them. **The failure to justify or explain underscored the doubt and suspicion about the integrity of the evidence of the *corpus delicti*.** With the chain of custody having been compromised, the accused deserves acquittal. x x x<sup>21</sup> (Emphasis supplied; citations omitted)

Conformably with these disquisitions, I thus express my full support over the institution by the *ponencia* of the following mandatory policies before a case for violation of R.A. 9165, as amended by R.A. 10640, may be filed:

1. In the sworn statements/affidavits, the apprehending/seizing officers must state their compliance with the requirements of Section 21 (1) of R.A. No. 9165, as amended, and its IRR.
2. In case of non-observance of the provision, the apprehending/seizing officers must state the justification or explanation therefor as well as the steps they have taken in order to preserve the integrity and evidentiary value of the seized/confiscated items.
3. If there is no justification or explanation expressly declared in the sworn statements or affidavits, the investigating fiscal must not immediately file the case before the court. Instead, he or she must refer the case for further preliminary investigation in order to determine the (non) existence of probable cause.
4. If the investigating fiscal filed the case despite such absence, the court may exercise its discretion to either refuse to issue a commitment order (or warrant of arrest) or dismiss the case outright for lack of probable cause in accordance with Section 5, Rule 112, Rules of Court.<sup>22</sup>

To my mind, the Court, through the said policies, actually achieves two laudable objectives, namely: (1) ensuring that the cases filed before the courts are not poorly prepared, thus ultimately leading to the decongestion of court dockets, and (2) further protection of the citizens from fabricated suits.

In connection with the case at hand, I therefore fully concur with the *ponencia* as it acquits Lim of the crime charged. In particular, I wholly agree with the *ponencia* as it holds that the explanations put forth by the apprehending team — that it was late at night, it was raining, and that there were simply no available elected official and representatives from the media and DOJ despite their **unsubstantiated** claim that they exerted efforts to contact them — are simply unacceptable.

---

<sup>21</sup> Id. at 536.

<sup>22</sup> *Ponencia*, pp. 15-16.





As the *ponencia* itself pointed out, “[i]t must be alleged and proved that the presence of the three witnesses to the physical inventory and photograph of the illegal drug seized was not obtained due to reason/s such as:”<sup>23</sup>

(1) their attendance was impossible because the place of arrest was a remote area; (2) their safety during the inventory and photograph of the seized drugs was threatened by an immediate retaliatory action of the accused or any person/s acting for and in his/her behalf; (3) the elected official themselves were involved in the punishable acts sought to be apprehended; (4) earnest efforts to secure the presence of a DOJ or media representative and an elected public official within the period required under Article 125 of the Revised Penal Code prove futile through no fault of the arresting officers, who face the threat of being charged with arbitrary detention; or (5) time constraints and urgency of the anti-drug operations, which often rely on tips of confidential assets, prevented the law enforcers from obtaining the presence of the required witnesses even before the offenders could escape.<sup>24</sup>

Verily, none of the above reasons — or any such justifications similar to the aforementioned — was present in this case.

It is important to note that (1) the report of the CI came in around 8:00 p.m.; (2) the police officers immediately arranged a buy-bust operation; and (3) they arrived at Lim’s house at about 15 minutes before 10:00 p.m. While the vigor exerted by the police officers was commendable, it must be pointed out that Lim was supposedly selling drugs **at his house**. In fact, Lim “was sitting on the sofa while watching the television” when the CI and the poseur-buyer arrived. There was thus no issue with regard to urgency and time constraints, as Lim was not a flight risk nor was his supposed commission of the crime bound to a limited period of time. To reiterate, Lim was supposedly **continuously** committing the crime **at his own residence**. The police officers could have, for instance, proceeded with the operation the following day when the presence of the three witnesses — as required by law — could have been obtained.

At this point, it is imperative to discuss that the presumption of regularity in the performance of duties by the police officers could not justify the police officers’ noncompliance with the requirements of law. Verily, the said presumption could not supply the acts which were not done by the police officers. The presumption of regularity in the performance of duties is simply that — a presumption — which can be overturned if evidence is presented to prove that the public officers were not properly performing their duty or they were inspired by improper motive.<sup>25</sup> It is not uncommon, therefore that cases will rely on the presumption when there is no showing of improper motive on the part of the police.

<sup>23</sup> Id. at 13; emphasis omitted.

<sup>24</sup> Id., citing *People v. Sipin*, G.R. No. 224290, June 11, 2018, p. 17.

<sup>25</sup> RULES OF COURT, Rule 131, Sec. 3(m) provides: “That official duty has been regularly performed.”



To my mind, however, notwithstanding a lack of showing of improper motive, the presumption of regularity of performance of official duty stands only when no reason exists in the records by which to doubt the regularity of the performance of official duty.<sup>26</sup> As applied to drugs cases, I believe that the presumption shall only arise when there is a showing that the apprehending officer/team followed the requirements of Section 21, or when the saving clause is successfully triggered.

Judicial reliance on the presumption of regularity in the performance of official duty despite the lapses in the procedures undertaken by the agents of the law is fundamentally unsound because the lapses themselves are affirmative proofs of irregularity.<sup>27</sup> In *People v. Enriquez*,<sup>28</sup> the Court held:

x x x [A]ny divergence from the prescribed procedure must be justified and should not affect the integrity and evidentiary value of the confiscated contraband. Absent any of the said conditions, the **non-compliance is an irregularity**, a red flag that casts reasonable doubt on the identity of the *corpus delicti*.<sup>29</sup> (Emphasis supplied)

Thus, in case of noncompliance with Section 21, the Court cannot rely on the presumption of regularity to say that the guilt of the accused was established beyond reasonable doubt. The discussion in *People v. Sanchez*<sup>30</sup> is instructive:

The court apparently banked also on the presumption of regularity in the performance that a police officer like SPO2 Sevilla enjoys in the absence of any taint of irregularity and of ill motive that would induce him to falsify his testimony. Admittedly, the defense did not adduce any evidence showing that SPO2 Sevilla had any motive to falsify. The regularity of the performance of his duties, however, leaves much to be desired given the lapses in his handling of the allegedly confiscated drugs as heretofore shown.

An effect of this lapse, as we held in *Lopez v. People*, is to negate the presumption that official duties have been regularly performed by the police officers. Any taint of irregularity affects the whole performance and should make the presumption unavailable. There can be no ifs and buts regarding this consequence considering the effect of the evidentiary presumption of regularity on the constitutional presumption of innocence.<sup>31</sup> (Citation omitted)

What further militates against according the police the presumption of regularity is the fact that even the pertinent internal guidelines of the police (some as early as 1999, predating R.A. 9165) require photographing and inventory during the conduct of a buy-bust operation.

---

<sup>26</sup> *People v. Mendoza*, supra note 6, at 770.

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

<sup>28</sup> 718 Phil. 352 (2013).

<sup>29</sup> *Id.* at 366.

<sup>30</sup> 590 Phil. 214 (2008).

<sup>31</sup> *Id.* at 242-243.



Under the 1999 Philippine National Police Drug Enforcement Manual<sup>32</sup> (PNPDEM), the conduct of buy-bust operations requires the following:

### ANTI-DRUG OPERATIONAL PROCEDURES

x x x x

#### V. SPECIFIC RULES

x x x x

**B. Conduct of Operation:** (As far as practicable, all operations must be officer led)

1. Buy-Bust Operation - in the conduct of buy-bust operation, the following are the procedures to be observed:
  - a. Record time of jump-off in unit's logbook;
  - b. Alertness and security shall at all times be observed[;]
  - c. Actual and timely coordination with the nearest PNP territorial units must be made;
  - d. Area security and dragnet or pursuit operation must be provided[;]
  - e. Use of necessary and reasonable force only in case of suspect's resistance:
  - f. If buy-bust money is dusted with ultra violet powder make sure that suspect ge[t] hold of the same and his palm/s contaminated with the powder before giving the pre-arranged signal and arresting the suspects;
  - g. In pre-positioning of the team members, the designated arresting elements must clearly and actually observe the negotiation/transaction between suspect and the poseur-buyer;
  - h. Arrest suspect in a defensive manner anticipating possible resistance with the use of deadly weapons which maybe concealed in his body, vehicle or in a place within arms['] reach;
  - i. After lawful arrest, search the body and vehicle, if any, of the suspect for other concealed evidence or deadly weapon;
  - j. Appraise suspect of his constitutional rights loudly and clearly after having been secured with handcuffs;
  - k. Take actual inventory of the seized evidence by means of weighing and/or physical counting, as the case may be;
  - l. Prepare a detailed receipt of the confiscated evidence for issuance to the possessor (suspect) thereof;

<sup>32</sup> PNPM-D-O-3-1-99 [NG], the precursor anti-illegal drug operations manual prior to the 2010 and 2014 AIDSOTF Manual.



m. **The seizing officer (normally the poseur-buyer) and the evidence custodian must mark the evidence** with their initials and also indicate the date, time and place the evidence was confiscated/seized;

n. **Take photographs of the evidence while in the process of taking the inventory, especially during weighing, and if possible under existing conditions, the registered weight of the evidence on the scale must be focused by the camera;** and

o. Only the evidence custodian shall secure and preserve the evidence in an evidence bag or in appropriate container and thereafter deliver the same to the PNP CLG for laboratory examination. (Emphasis and underscoring supplied)

Chapter 4, Rule 37 of the 2013 Revised Philippine National Police (PNP) Operational Procedures<sup>33</sup> applicable during the pre-amendment of Section 21 provides:

### **37.3 Handling, Custody and Disposition of Evidence**

- a. **In the handling, custody and disposition of evidence, the provision of Section 21, RA 9165 and its IRR shall be strictly observed.**
- b. 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.
- c. 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, 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.
- d. Photographs of the pieces of evidence must be taken upon discovery without moving or altering its position in the place where it was situated, kept or hidden, including the process of recording the inventory and the weighing of dangerous drugs, and if possible under existing conditions, with the registered weight of the evidence on the scale focused by the camera, in the presence of persons required, as provided under Section 21, Art II, RA 9165. (Emphasis and underscoring supplied)

<sup>33</sup> PNP Handbook, PNPM-DO-DS-3-2-13, December 2013.



Further, the Revised PNP Manual on Anti-Illegal Drugs Operation and Investigation<sup>34</sup> (2014 AIDSOTF Manual) similarly requires strict compliance with the provisions:

**Section 2-6 Handling, Custody and Disposition of Drug and Non-Drug Evidence**

**2.33 During handling, custody and disposition of evidence, provisions of Section 21, RA 9165 and its IRR as amended by RA 10640 shall be strictly observed.**

**2.34** Photographs of pieces of evidence must be taken immediately upon discovery of such, without moving or altering its original position including the process of recording the inventory and the weighing of illegal drugs in the presence of required witnesses, as stipulated in Section 21, Art II, RA 9165, as amended by RA 10640.

x x x x

**a. Drug Evidence.**

- 1) Upon seizure or confiscation of illegal drugs or CPECs, laboratory equipment, apparatus and paraphernalia, the operating Unit's Seizing Officer/Inventory Officer must conduct the physical inventory, markings and photograph the same in the place of operation in the presence of:
  - (a) The suspect/s or the person/s from whom such items were confiscated and/or seized or his/her representative or counsel;
  - (b) With an elected Public Official; and
  - (c) Any representatives from the Department of Justice or Media who shall affix their signatures and who shall be given copies of the inventory.
- 2) For seized or recovered drugs covered by Search Warrants, the inventory must be conducted in the place where the Search Warrant was served.
- 3) For warrantless seizures like buy-bust operations, inventory and taking of photographs should be done at the nearest Police Station or Office of the apprehending Officer or Team.
- 4) **If procedures during the inventory were not properly observed, as stipulated in Section 21, RA 9165 as amended by RA 10640, law enforcers must make a justification in writing for non-observance of the same to prove that the integrity and evidentiary value of the seized items are not tainted.** (Emphasis and underscoring supplied)

<sup>34</sup> PNP Manual, PNPM-D-0-2-14 (DO), September 2014.



Under Sections Section 3-1(3.1)(b)(6) and (3.1)(b)(7) of the 2014 AIDSOTF Manual, **strict** compliance is similarly demanded from police officers, thus:

- 6) During the actual physical inventory, the **Seizing Officer must mark, and photograph** the seized/recovered pieces of evidence **in accordance with the provision of Section 21 of RA 9165** as amended by RA 10640 in the presence of:
  - (a) The suspect or person/s from whom such items were confiscated and/or seized or his/her representative or counsel;
  - (b) With an elected Public Official; and
  - (c) Any representatives from the Department of Justice or Media who shall affix their signatures and who shall be given copies of the inventory.

(Note: The presence of the above-mentioned witnesses shall only be required during the physical inventory of the confiscated items. **If in case, witnesses mentioned above are absent, same should be recorded in the report.**

- 7) In warrantless searches and seizures like buy-bust operations, the inventory and taking of photographs shall be made at the nearest Police Station or Office of the Apprehending Officer or Team whichever is practicable, however, **concerned police personnel must execute a written explanation to justify, non-compliance of the prescribed rules on inventory under Section 21, RA 9165 as amended by RA 10640.** x x x (Emphasis and underscoring supplied)

The Court has ruled in *People v. Zheng Bai Hui*<sup>35</sup> that it will not presume to set an *a priori* basis of what detailed acts police authorities might credibly undertake and carry out in their entrapment operations. However, given the police operational procedures, it strains credulity why the police officers could not have (1) ensured the presence of the required witnesses, or at the very least (2) marked, photographed, and physically inventoried the seized items pursuant to the provisions of their own operational procedures.<sup>36</sup>

To my mind, therefore, while no *a priori* basis for the conduct of a valid buy-bust operation is set, **the noncompliance of the police with their own procedures** implicates (1) the operation of the saving clause and (2) the appreciation of the presumption of regularity.

With this in mind, anything short of observance and compliance by the PDEA and police authorities with the positive requirements of the law, and even with their own internal procedures, means that they have not

<sup>35</sup> 393 Phil. 68, 133 (2000).

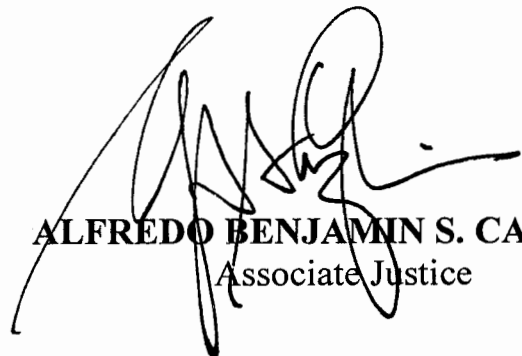
<sup>36</sup> Note also that the same PNPDEM lays down the guidelines for preparation in buy-bust operations, including the preparation of inventory and photographing equipment, save only from the *a priori* basis consideration above.



performed their duties. If they did, then it would not be difficult for the prosecution to acknowledge the lapses and justify the same — it needs merely to present the justification in writing required to be executed by the police under Sections 2-6(2.33)(a)(4) and 3-1(3.1)(b)(7) of the 2014 AIDSOTF Manual. After which, the court can proceed to determine whether the prosecution had credibly explained the noncompliance so as to comply with the first prong of the saving mechanism. I submit that without a justification being offered, the finding that the integrity and probative weight of the seized items are preserved can only satisfy the second prong and will not trigger the saving clause.

It then becomes error to fill the lacuna in the prosecution's evidence with the presumption of regularity, when there clearly is no established fact from which the presumption may arise. As such, the evidence of the State has not overturned the presumption of innocence in favor of the accused.<sup>37</sup>

Based on these premises, I vote to **GRANT** the instant appeal and **REVERSE** and **SET ASIDE** the Decision of the Court of Appeals dated February 23, 2017 finding accused-appellant Romy Lim y Miranda guilty beyond reasonable doubt of violating Sections 5 and 11, Article II of Republic Act No. 9165.



**ALFREDO BENJAMIN S. CAGUIOA**  
Associate Justice

---

<sup>37</sup> See *People v. Barte*, supra note 16, at 22.