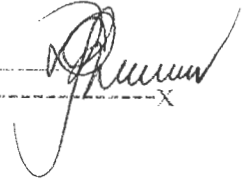


G.R. No. 254208 – PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee*,
v. MA. DEL PILAR ROSARIO C. CASA a.k.a. “MARFY
CALUMPANG,” “MADAM,” and “MAH-MAH,” *Accused-Appellant*.

Promulgated:

August 16, 2022

X-----X



CONCURRING OPINION

LOPEZ, M. J.:

The *ponencia* acquitted accused-appellant Ma. Del Pilar Rosario C. Casa (accused-appellant) based on reasonable doubt as to the elements of Illegal Sale and Illegal Possession of Dangerous Drugs, and noncompliance with Section 21, Article II of Republic Act (RA) No. 9165,¹ as amended by RA No. 10640.² Among the several lapses in the chain of custody, Chief Justice Alexander G. Gesmundo focused the discourse on the policemen’s general explanation that failed to justify the conduct of the inventory and photography at the police station, instead of at the place of seizure.³ I concur in accused-appellant’s acquittal due to the failure of the prosecution to sufficiently establish the elements of the crimes, as well as the apprehending team’s noncompliance with Section 21, particularly the failure of accused-appellant to sign the Inventory/Receipt of Property Seized, and the dearth of evidence on the management, storage, and preservation of the illegal drugs while in the custody of the forensic chemist and before they were transmitted to the trial court. However, I respectfully submit the following observations with respect to the immediacy of the inventory and photographing requirement.

*What Section 21 and
the IRR provides*

The chain of custody rule, as originally embodied in Section 21, Article II of RA No. 9165, provides that “[t]he apprehending team having initial

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

² Entitled “AN ACT TO FURTHER STRENGTHEN THE ANTI-DRUG CAMPAIGN OF THE GOVERNMENT, AMENDING FOR THE PURPOSE SECTION 21 OF REPUBLIC ACT NO. 9165, OTHERWISE KNOWN AS THE ‘COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002’”, approved on July 15, 2014. RA No. 10640 took effect on August 7, 2014, or 15 days after its complete publication in two newspapers of general circulation, The Philippine Star and the Manila Bulletin, on July 23, 2014.

³ See *ponencia*, pp. 14-15.



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 persons/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[.]” The law highlights the immediacy of the inventory and photographing requirement of the illegal drugs as part of the chain of custody. The Implementing Rules and Regulations⁴ (IRR) of RA No. 9165 further echoes immediacy as it explicitly requires the apprehending officer/team to “**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 [DOJ], and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof[.]”⁵

In 2014, RA No. 10640 took effect, and substantially amended Section 21, but maintained the requirement of immediate conduct of physical inventory and photography. Section 21 now reads that the apprehending team having initial custody and control of the dangerous drugs 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 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[.]” The amendatory law further provides the location where the inventory and photography must be conducted which may be “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[.]” A saving clause was expressly added in that “noncompliance of these requirements under justifiable grounds, as long as the integrity and 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.” Corollarily, the Guidelines on the IRR of Section 21, as amended,⁶ echoes the mandate of the law to “**immediately after seizure and confiscation, mark, inventory and photograph**” the drugs at the place “where the search warrant is served[.]” or in cases of warrantless seizures, “in the same nearest police station or nearest office of the apprehending officer/team, whichever is practicable.” RA No. 10640, as well as the Guidelines on the IRR, requires strict compliance with the immediate physical inventory and photography of the seized illegal drugs.

⁴ Entitled “IMPLEMENTING RULES AND REGULATIONS (IRR) OF REPUBLIC ACT NO. 9165, OTHERWISE KNOWN AS THE ‘COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002’”; approved on August 30, 2002.

⁵ See Section 21 of the IRR of RA No. 9165.

⁶ Entitled “GUIDELINES ON THE IMPLEMENTING RULES AND REGULATIONS (IRR) OF SECTION 21 OF REPUBLIC ACT NO. 9165, AS AMENDED BY REPUBLIC ACT NO. 10640”; approved on May 28, 2015.

***What is the meaning of
“immediately”***

Black’s Law Dictionary defines “immediate” as “present; at once; without delay; not deferred by any interval of time.” It denotes that the action is or must be taken either instantly or without any considerable loss of time.⁷ However, the word “immediately” does not necessarily import the exclusion of any interval of time. It is a word without very definite signification and subject to its grammatical connections.⁸ It is impossible to lay down any hard and fast rule as to what is the meaning of the word “immediately” in all cases.⁹ Further stating that “immediately” is stronger than the expression “within a reasonable time,” it implies prompt, vigorous action, without any delay, and whether there has been delay is a question of fact, having regard to the circumstances of the particular case.¹⁰

The Court has applied the context of the word “immediately” in differing circumstances. In the case *People v. Maralit*,¹¹ the Court found that the inventory and photography of the drugs were immediately conducted at the place of arrest, albeit there was a 10-minute gap from the moment the bricks of *marijuana* were confiscated to the moment they were marked and inventoried. The Court ruled that the prosecution adequately justified the 10 minutes between Maralit’s arrest and the marking and inventory of the items as time spent waiting for the arrival of the witnesses.¹² In contrast, in *People v. Adobar*,¹³ none of the insulating witnesses were present during the confiscation of the drugs and the apprehending team summoned the Punong Barangay only sometime after the seizure of the drugs. About 15 minutes from the call, the Punong Barangay arrived at the scene, and the Court held that the immediate conduct of the inventory after seizure and confiscation was not established.¹⁴ Compliance with the requirement of immediacy therefore depends on the circumstances of each case.

Citing *People v. Musor*¹⁵ (*Musor*), the *ponencia* expounded 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. It adds that only when the same is not practicable does the law allow the inventory and photographing to be done as soon as the buy-bust team reaches the nearest police station or at the office of the apprehending officer/team. In *Musor*, the Court further ruled that the explanation that people were already starting to gather was

⁷ *Immediate*, BLACK’S LAW DICTIONARY, 2ND ED., available at <<https://thelawdictionary.org/immediate/>> (last accessed on August 16, 2022).

⁸ *Id.*, citing *Howell v. Gaddis*, 31 N.J. Law, 313.2.

⁹ *Immediately*, BLACK’S LAW DICTIONARY, 2ND ED., available at <<https://thelawdictionary.org/immediately/>> (last accessed on August 16, 2022).

¹⁰ *Id.*, citing Cockburn, C.J., in *Reg. v. Justices of Berkshire*, 4 Q.B. Div. 471.

¹¹ 838 Phil. 191 (2018) [Per J. Reyes, Jr., Second Division].

¹² See *id.* at 207–209.

¹³ 832 Phil. 731 (2018) [Per J. Caguioa, Second Division].

¹⁴ See *id.* at 753–758.

¹⁵ G.R. No. 231843, November 7, 2018, 885 SCRA 154 [Per J. Caguioa, Second Division].

insufficient to justify the transfer of inventory and taking of photographs elsewhere.¹⁶

Musor was similarly applied in later cases.¹⁷ In *People v. Dumanjug*,¹⁸ the team leader's assessment that the convergence of more or less 200 people at the place where the buy-bust operation took place did not justify a deviation to undertake the requirement of inventory and photographing at the Philippine Drug Enforcement Agency (PDEA) office.¹⁹ Likewise in *People v. Salenga*,²⁰ the reason of the poseur buyer that the inventory was conducted at the police station because the crowd was getting bigger was rejected by the Court since no threat to the security of the officers and the accused was proved.²¹ Evidently, when no explanation or justification was proffered as to why the conduct of inventory and taking of photographs were impracticable at the place of apprehension, the buy-bust team already committed a procedural lapse in the custody and handling of the seized drugs.²²

The Court then held, in *People v. Lim*,²³ that the immediate physical inventory and photography of the confiscated items at the place of arrest may be excused in instances when the safety and security of the apprehending officers and the witnesses required by law or of the items seized are threatened by immediate or extreme danger, such as retaliatory action of those who have the resources and capability to mount a counter-assault.²⁴ Hence, in *People v. Tagluco*,²⁵ the police officers adequately justified their transfer from the place of apprehension to the police station due to a confluence of factors, *i.e.*, a crowd was gathering, it was raining, and the place of apprehension was unsafe.²⁶

To stress the application of the immediate conduct of inventory and photography, it was categorically held in this case that generally, the inventory and photographing must be conducted at the place of seizure. The exception to this rule, where the physical inventory and taking of photographs of the seized item may be conducted at the nearest police station or at the nearest office of the apprehending officer or team, is when the police officers provide justification that: (1) it is not practicable to conduct the same at the place of seizure; or (2) the items seized are threatened by immediate or extreme danger at the place of seizure.²⁷

¹⁶ See *ponencia*, pp. 16–17.

¹⁷ See *id.* at 17–18.

¹⁸ G.R. No. 235468, July 1, 2019, 907 SCRA 89 [Per J. Caguioa, Second Division].

¹⁹ See *id.* at 111–112.

²⁰ G.R. No. 239903, September 11, 2019, 919 SCRA 342 [Per J. Jardeleza, First Division].

²¹ See *id.* at 356–359.

²² *People v. Tubera*, G.R. No. 216941, June 10, 2019, 903 SCRA 375, 392–395 [Per J. Caguioa, Second Division].

²³ 839 Phil. 598 (2018) [Per J. Peralta, *En Banc*].

²⁴ *Id.* at 620. See also *People v. Mola*, 830 Phil. 364, 375–376 (2018) [Per J. Peralta, Second Division].

²⁵ G.R. No. 243577, March 15, 2022. <<https://sc.judiciary.gov.ph/27556/>> [Per. C.J. Gesmundo, First Division].

²⁶ *Id.*

²⁷ See *ponencia*, p. 19.

The phrase “**immediately after seizure and confiscation**” pertains to both the time and place elements of the physical inventory and photographing of the drugs. Compliance with the **time element** necessitates the conduct of inventory and photographing right after confiscation, without unjustifiable delay or intervening period. On the other hand, the **place element** requires the inventory and photography either: (1) at the place of seizure or arrest; (2) at the nearest police station; or (3) at the nearest office of the apprehending officer/team, whichever is practicable. The original and amendatory laws, as well as its IRRs, do not explicitly mandate that the inventory and photographing must be done only at the place of arrest for warrantless seizures. Rather, the law expressly permits that in cases of warrantless seizures, the physical inventory and photography may be conducted at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable.²⁸ Hence, the element of immediacy is satisfied when the apprehending team inventories and photographs the illegal drugs right after its confiscation at the place of seizure, or at the nearest police station or office of the apprehending team, provided that the prosecution established any justification or explanation in conducting the inventory and photography at a place other than that of seizure.

In *People v. Sultan*,²⁹ it was the difficulty, if not the impossibility, of strictly complying with Section 21 during the actual apprehension which justifies the slight deviation by the arresting officers from the rule. The strong resistance of accused-appellant to the arrest and the interference of several persons made it imperative upon the apprehending police officers to withdraw from the place immediately.³⁰ In *People v. Moner*,³¹ the police officers reasoned that the physical inventory was not done at the place of seizure was because of their unfamiliarity with the place – it was not their area of responsibility. The circumstances that the buy-bust team proceeded first to the Central Police District Station, Camp Karingal in Quezon City and, from there, they were accompanied by a police officer from the station to the target location, aside from proving that it was a legitimate police operation, supported the existence of a security risk to the buy-bust team. These additional precautions taken by the buy-bust team underscored their unfamiliarity with the location of the operation and, in fact, corroborated the above-quoted testimony that the buy-bust team believed there was a threat to their security. The divergence in procedure was not arbitrary or whimsical but because the buy-bust team decided that they could not linger at the crime scene, as it would unduly expose them to security risks since they were outside their area of responsibility.³²

²⁸ See *People v. Juan*, G.R. No. 249183, December 7, 2021 [Notice, First Division]; and *People v. Dayo*, G.R. No. 249161, September 16, 2020 [Notice, Third Division].

²⁹ 637 Phil. 528 (2010) [Per J. Villarosa, Jr., Tenth Division].

³⁰ *Id.* at 540.

³¹ 827 Phil. 42 (2018) [Per J. Leonardo-De-Castro, First Division].

³² *Id.* at 61.

In *People v. Guadaña*,³³ the buy-bust operation was conducted past 9:00p.m., on a bridge that was located in a remote area. Given the surrounding circumstances, it was neither practical nor safe for the arresting team to conduct the required inventory at the place of apprehension. Moreover, there was neither a DOJ representative or media man available in Manito, Albay because of its distance from Legazpi City, where these representatives are staying. The highway connecting the Municipality of Manito and the City of Legazpi is also a critical area in terms of security due to the insurgency.³⁴ In *People v. Magalong*,³⁵ the arresting team made an initial inventory at the place of arrest and transferred to the PDEA office to continue the inventory. The team clarified that their decision to continue the inventory at the PDEA office was for security reasons. A crowd was gathering at the vicinity that was also a few meters away from the Muslim area.³⁶ In *People v. Buesa*,³⁷ while marking of the evidence was done at the place of arrest, the police officers had to conduct the inventory and photography at the police station because the place where Buesa was arrested was a dangerous and accident-prone area.³⁸

In these cases, the apprehending team did not have unbridled discretion on when and where to conduct the inventory and photography process. As the exigencies of the buy-bust operation surfaced, each team made a calculated and strategic decision to momentarily defer the inventory, leave the place of apprehension, and transfer to the nearest police station or nearest office of the apprehending officer/team. It is apparent that the continuation of the inventory and photography elsewhere was conducted because of impracticable circumstances. The transfer was not arbitrary, but the result of conditions beyond the control of the buy-bust team. While delay could be attributed to them, it is neither unreasonable nor groundless. The intervening period between the time of seizure at the place of arrest, and the time of inventory and photography at the nearest police station or office of the apprehending officer/team, was adequately justified.

Therefore, the element of immediacy contemplates either: *first*, the conduct of the inventory and photography right after seizure and confiscation, without unjustifiable delay or intervening period at the place of seizure or arrest; and *second*, the conduct of the inventory and photography at the nearest police station or nearest office of the apprehending team, whichever is practicable, provided that the prosecution sufficiently established any reasonable justification or explanation in conducting the inventory and photography at a place other than that of seizure or arrest.

³³ 836 Phil. 1219 (2018) [Per J. Reyes, Jr., Second Division].

³⁴ See *id.* at 1226-1227.

³⁵ G.R. No. 231838, March 4, 2019, 394 SCRA 554 [Per J. Peralta, Third Division].

³⁶ See *id.* at 568-569.

³⁷ G.R. No. 237850, September 16, 2020, <<http://sc.judiciary.gov.ph/14116/>> [Per C.J. Peralta, First Division].

³⁸ See *id.*

Immediate conduct of inventory and photography under the PNP Manuals

The 2010 Philippine National Police (PNP) Manual on Anti-Illegal Drugs Operation and Investigation³⁹ (2010 PNP Manual) incorporates the conduct of the inventory and photography during planned buy-bust operations against drug personalities. Section 13, Rule II of the 2010 PNP Manual guides the apprehending team in the handling, custody, and disposition of the drug evidence, thus:

A-Drug Evidence

a. Upon seizure or confiscation of the dangerous drugs x x x, 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. A representative from the media;
- c. A representative from the Department of Justice; and
- d. Any elected public official who shall affix their signatures and who shall be given copies of the inventory.

b. For seized drugs **covered by search warrants**, the inventory must be conducted **in the place where the search was served**.

c. **In warrantless seizures** like buy-bust operations, the inventory and the taking of photographs should be done **at the nearest police station or office of the apprehending officer or team**. However, the apprehending authority is not precluded from conducting the inventory **at the place where the drugs were seized**.

x x x (Emphasis supplied)

After RA No. 10640 became effective in 2014, the Revised PNP Manual on Anti-Illegal Drugs Operations and Investigation⁴⁰ (2014 PNP Manual) was issued. Item 2.36, Section 2-6, Chapter 2 of the 2014 PNP Manual retained the provision that the inventory and photography should be conducted at the place of operation, or at the nearest police station, or office of the apprehending team, to wit:

- a. Drug Evidence.

³⁹ See National Police Commission Resolution No. 2010-094, entitled "APPROVING THE PNP MANUAL ON ANTI-ILLEGAL DRUGS OPERATION AND INVESTIGATION" (February 26, 2010).

⁴⁰ See PNP Manual PNPM-D-0-2-14 (DO), entitled "REVISED PNP MANUAL ON ANTI-ILLEGAL DRUGS OPERATIONS AND INVESTIGATION" (September 2014).

- 1) Upon seizure or confiscation of illegal drugs x x x, 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**.

x x x (Emphasis supplied)

At present, the Revised PNP Operational Procedures issued on September 2021⁴¹ (2021 PNP Manual) categorically directs law enforcement officers to comply with the immediate inventory and photography of the confiscated or discovered drugs. Item 2.8 (c), Rule 2, Chapter 2 of the 2021 PNP Manual's Rules on Anti-Drugs Operations provides:

c. Handling, Custody and Disposition of Drug and Non-Drug Evidence (DOJ, 2020).

x x x **Photographs of pieces of evidence must be taken immediately upon discovery of such, including the process of recording the inventory** in the presence of the required witnesses. x x x

- 1) Drug evidence
 - a) Upon seizure or confiscation of dangerous drugs x x x, the operating unit's seizing officer/inventory officer **must conduct the photographing, marking and physical inventory in the place of operation** in the presence of:
 - (1) The suspect/s or the person/s from whom such items were confiscated and/or seized or is/her representative or counsel.
 - (2) An elected public official; and

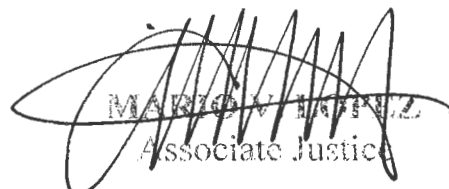
⁴¹ See PNP Manual PNPM-DO-D-0-2-13-21, entitled "REVISED PHILIPPINE NATIONAL POLICE OPERATIONAL PROCEDURES" (September 2021).

- (3) Representative from the National Prosecution Service (NPS) or media, who shall affix their signatures and who shall be given copies of the inventory. The Chain of Custody Form for Drug Evidence, Non-Drug Evidence and for Laboratory, whichever is applicable, shall be accomplished together with the Certificate of Inventory of Seized Items.
- b) For seized or recovered drugs **covered by search warrants**, the photographing, marking and inventory must be done **in the place where the search warrant was served**.
- c) For **warrantless seizures** like buy-bust operations, the photographing, markings, and physical inventory must be done **at the place of apprehension, unless for justifiable reasons, the photographing, markings, and physical inventory may be made at the nearest police station or office of the apprehending officer or team**, ensuring that the integrity and evidentiary value of the seized items remain intact and preserved. Such justification or explanation as well as the steps taken to preserve the integrity and evidentiary value of the seized/confiscated items shall be clearly stated in a sworn affidavit of justification/explanation of the apprehending/seizing officers.
- d) x x x x
- e) In case of **seizure of plant sources at the plantation site**, where it is not physically possible to count or weigh as a complete entity, the seizing officer shall estimate its count of gross weight, as the case may be. **If it is safe and practicable, the photographing marking and inventory of the seized plant sources may be performed at the plantation site.** x x x

x x x x (Emphasis supplied)

Clearly, the provisions in the 2010, 2014, and 2021 PNP Manuals strengthen the mandate of RA No. 10640 and its IRR to immediately conduct the inventory and photographing requirements at the place of operation; or at the nearest police station or nearest office of the apprehending team, whichever may be practicable. Law enforcement officers are sufficiently trained to execute their drug operations in strict compliance with the amendatory law.

Accordingly, I vote to **GRANT** the appeal.


MARIO V. MARTINEZ
Associate Justice