



Republic of the Philippines  
Supreme Court  
Office of the Court Administrator  
Manila

OCA CIRCULAR NO. 251-2018

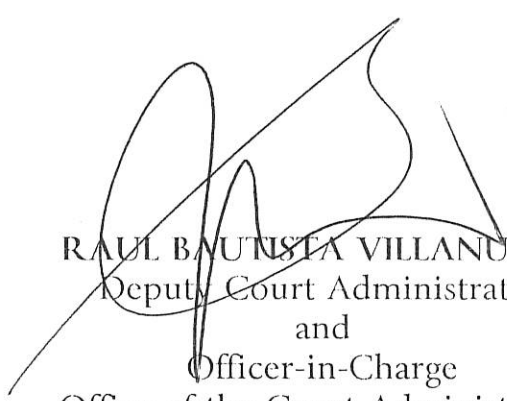
TO : ALL JUDGES AND CLERKS OF COURT OF THE SECOND LEVEL COURTS

SUBJECT : RESOLUTION DATED 13 NOVEMBER 2018 IN G.R. NO. 231989 (PEOPLE OF THE PHILIPPINES V. ROMY LIM Y MIRANDA) PROVIDING, AMONG OTHERS, FURTHER CLARIFICATION ON THE APPLICATION AND INTERPRETATION OF THE MANDATORY POLICY THAT SHALL GOVERN THE PRACTICE IN MAINTAINING THE CHAIN OF CUSTODY TO PRESERVE THE INTEGRITY AND EVIDENTIARY VALUE OF SEIZED/CONFISCATED ILLEGAL DRUGS AND OTHER DRUG-RELATED ITEMS

For the information, guidance and strict observance of all second level courts, appended herein as Annex "A" is the Resolution dated 13 November 2018 of the Honorable Court, *En Banc*, in G.R. No. 231989 (*People of the Philippines v. Romy Lim y Miranda*). In the Resolution, the Court provides, among others, further clarification on the application and interpretation of the mandatory policy that shall govern the practice in maintaining the chain of custody to preserve the integrity and evidentiary value of seized/confiscated illegal drugs and other drug-related items.

This circular relates to OCA Circular No. 210-2018 dated 01 October 2018 (Re: Decision dated 04 September 2018 in G.R. No. 231989 [*People of the Philippines v. Romy Lim y Miranda*] Providing, Among Others, For The Mandatory Policy That Shall Govern The Practice In Maintaining The Chain Of Custody To Preserve The Integrity And Evidentiary Value Of Seized/Confiscated Illegal Drugs And Other Drug-Related Items).

29 November 2018

  
RAUL BUNISTA VILLANUEVA  
Deputy Court Administrator  
and  
Officer-in-Charge  
Office of the Court Administrator  
(Per Office Order No. 13-2018  
dated 23 November 2018)



Republic of the Philippines  
 Supreme Court  
 Manila

EN BANC

NOTICE

Sirs/Mesdames:

Please take notice that the Court en banc issued a Resolution dated **NOVEMBER 13, 2018**, which reads as follows:

“G.R. No. 231989 (*People of the Philippines v. Romy Lim y Miranda*) - In a Letter dated October 17, 2018, the Philippine Drug Enforcement Agency (*PDEA*) states that since the promulgation of *People v. Romy Lim y Miranda* on September 4, 2018, there has been an alarming increase in the number of dismissals or acquittals made with undue haste premised on the said ruling, apparently requiring three (3) witnesses to be present during the conduct of the physical inventory and the taking of photographs of pieces of drug evidence seized from a drug suspect. The *PDEA* claims that what seems to have assumed significance in *Lim* is the apparent misinterpretation or misapplication of Section 21 of Republic Act (*R.A.*) No. 9165, which requires three (3) witnesses to be present during the physical inventory and taking of photographs of pieces of evidence seized from a suspect.

The Court notes the Letter dated October 17, 2018 of the *PDEA*, but denies the request for a detailed and more precise guideline of the ruling in *People v. Romy Lim y Miranda*.

The mandatory policy laid down in *Lim* should not be given retroactive effect. Pertinent portion of *Lim* clearly indicates a prospective application of such policy:

To conclude, judicial notice is taken of the fact that arrests and seizures related to illegal drugs are typically made without a warrant; hence, subject to inquest proceedings. Relative thereto, Sections 1 (A.1.10) of the Chain of Custody Implementing Rules and Regulations directs:

A.1.10. Any justification or explanation in cases of noncompliance with the requirements of Section 21 (1) of R.A. No. 9165, as amended, shall be clearly stated in the sworn statements/affidavits of the

apprehending/seizing officers, as well as the steps taken to preserve the integrity and evidentiary value of the seized/confiscated items. Certification or record of coordination for operating units other than the PDEA pursuant to Section 86 (a) and (b), Article IX of the IRR of R.A. No. 9165 shall be presented.

While the above-quoted provision has been the rule, it appears that it has not been practiced in most cases elevated before Us. Thus, in order to weed out early on from the courts' already congested docket any orchestrated or poorly built up drug-related cases, the following should henceforth be enforced as a mandatory policy:

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,<sup>1</sup> Rule 112, Rules of Court.<sup>2</sup>

Synonymous to "henceforth" are "from now on," "from this point forward," "henceforward," "afterward," "later," "subsequently," "hereupon" or "thereupon." Without doubt, the mandatory policy in *Lim* is applicable

<sup>1</sup> SEC. 5. *When warrant of arrest may issue.* — (a) *By the Regional Trial Court.* — Within ten (10) days from the filing of the complaint or information, the judge shall personally evaluate the resolution of the prosecutor and its supporting evidence. He may immediately dismiss the case if the evidence on record clearly fails to establish probable cause. If he finds probable cause, he shall issue a warrant of arrest, or a commitment order if the accused has already been arrested pursuant to a warrant issued by the judge who conducted the preliminary investigation or when the complaint or information was filed pursuant to Section 6 of this Rule. In case of doubt on the existence of probable cause, the judge may order the prosecutor to present additional evidence within five (5) days from notice and the issue must be resolved by the court within thirty (30) days from the filing of the complaint or information.

<sup>2</sup> Emphasis added.

only to drug cases under R.A. No. 9165, as amended by R.A. No. 10640,<sup>3</sup> filed in court after the promulgation of *Lim* on September 4, 2018.

The mandatory policy in *Lim* was laid down “in order to weed out early on from the courts’ already congested docket any orchestrated or poorly built up drug-related case.” The said policy is a procedural rule adopted for the purpose of giving the trial courts 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 of the Rules of Court, if there is no statement in the sworn statements or affidavits of compliance with Section 21, R.A. No. 9165, as amended by R.A. No. 10640. Such policy does not apply to cases filed before the promulgation of *Lim* where the accused has already been arraigned and is undergoing continuous trial, because the justifiable reasons for non-compliance with Section 21, R.A. No. 9165, as amended by R.A. No. 10640, can still be established during trial. Non-compliance with the policy in *Lim* is not a ground for acquittal based on reasonable doubt or violation of the chain of custody rule, which can only be decreed after trial, or pursuant to a demurrer to evidence under Section 23,<sup>4</sup> Rule 119 of the Rules of Court.

Contrary to the claim of PDEA, *Lim* does not always require three (3) witnesses to be present during the conduct of the physical inventory and taking of photographs of the seized dangerous drugs. It bears emphasis that the accused in *Lim* was charged in two (2) Informations dated October 21, 2010 for drug offenses committed prior to the approval of R.A. No. 10640 on July 15, 2014; hence, the applicable law then was Section 21, R.A. No. 9165 and its Implementing Rules and Regulation (*IRR*), which requires the presence of three (3) witnesses.

In *People v. Vicente Sipin y De Castro*,<sup>5</sup> the Court pointed out that under the original provision of Section 21, R.A. No. 9165 and its *IRR*, the apprehending team was required to immediately conduct a physical inventory and photograph the drugs after their seizure and confiscation in

<sup>3</sup> 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”

<sup>4</sup> Section 23. Demurrer to evidence. — After the prosecution rests its case, the court may dismiss the action on the ground of insufficiency of evidence (1) on its own initiative after giving the prosecution the opportunity to be heard or (2) upon demurrer to evidence filed by the accused with or without leave of court. If the court denies the demurrer to evidence filed with leave of court, the accused may adduce evidence in his defense. When the demurrer to evidence is filed without leave of court, the accused waives the right to present evidence and submits the case for judgment on the basis of the evidence for the prosecution. (15a)

The motion for leave of court to file demurrer to evidence shall specifically state its grounds and shall be filed within a non-extendible period of five (5) days after the prosecution rests its case. The prosecution may oppose the motion within a non-extendible period of five (5) days from its receipt.

If leave of court is granted, the accused shall file the demurrer to evidence within a non-extendible period of ten (10) days from notice. The prosecution may oppose the demurrer to evidence within a similar period from its receipt.

The order denying the motion for leave of court to file demurrer to evidence or the demurrer itself shall not be reviewable by appeal or by *certiorari* before judgment. (n)

<sup>5</sup> G.R. No. 224290, June 11, 2018.



the presence of no less than **three witnesses**, namely: (1) a representative from the media, **and** (2) the DOJ, **and**; (3) any elected public official who shall be required to sign copies of the inventory and be given copy thereof. The presence of the three witnesses was intended as a guarantee against planting of evidence and frame up, as they were “necessary to insulate the apprehension and incrimination proceedings from any taint of illegitimacy or irregularity.”<sup>6</sup> In contrast, R.A. No. 10640, which amended Section 21 of R.A. No. 9165 and its IRR, now only requires **two witnesses** to be present during the conduct of the physical inventory and taking of photograph of the seized items, namely: (1) an elected public official; **and** (2) either a representative from the National Prosecution Service **or** the media.

It is not amiss to stress, however, that both the IRR of Section 21 of R.A. No. 9165 and R.A. No. 10640 similarly provide that the physical inventory and photograph shall be immediately after seizure and confiscation of the dangerous drugs, etc. (1) at the place where the search warrant is served; or (2) at the nearest police station, or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures.

Assuming that there is a perceived misinterpretation or misapplication of *Lim*, the proper remedy is to file a timely motion for reconsideration or appeal, unless double jeopardy has set in, or even a petition for *certiorari*, in case there is grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the judge.

The PDEA further laments that law enforcement agencies are really having a hard time securing the attendance of the witnesses stated in R.A. No. 9165, as amended by R.A. No. 10640, because many witnesses, especially those of the National Prosecution Service and locally-elected officials, would not want to get involved in anti-drug operation and post-operation processes. The PDEA adds that there are instances when the available witnesses in the locality where the physical inventory and taking of photographs of the pieces of evidence seized from an accused are suspected to be connected or related to the suspect or the drug syndicate or group the said witnesses are affiliated with, precluding the operating units from inviting them as witnesses.

It would do well for PDEA to bear in mind that if there is any difficulty in complying with Section 21, R.A. No. 9165, as amended by R.A. No. 10640 [*e.g.*, absence of an elected public official **and** a representative of the National Prosecution Service **or** the media], the law enforcement officers must state in the sworn statements/affidavits the justifiable grounds for non-compliance with the requirements, as well as the steps taken to preserve the identity and evidentiary value of the

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<sup>6</sup> *People v. Sagana*, G.R. No. 208471, August 2, 2017.

seized/confiscated items, in order to avoid dismissal of drug cases for lack of probable cause. *Lim* has, in fact, restated some justifiable reasons that may be alleged and that the prosecution would be obliged to prove during trial:

(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>7</sup>

Besides, the legitimate concerns of the PDEA are not novel, and have been addressed and considered in the enactment of R.A. No. 10640. In her Sponsorship Speech on Senate Bill No. 2273, which eventually became R.A. No. 10640, Senator Grace L. Poe conceded that “while Section 21 was enshrined in the Comprehensive Dangerous Drugs Act to safeguard the integrity of the evidence acquired and prevent planting of evidence, the application of said Section resulted in the ineffectiveness of the government’s campaign to stop the increasing drug addiction and also, in the conflicting decisions of the courts.”<sup>8</sup> Senator Poe stressed the necessity for the amendment of Section 21 based on the public hearing that the Senate Committee on Public Order and Dangerous Drugs had conducted, which revealed that “compliance with the rule on witnesses during the physical inventory is difficult. For one, media representatives are not always available in all corners of the Philippines, especially in the remote areas. For another there were instances where elected *barangay* officials themselves were involved in the punishable acts apprehended and, thus, it is difficult to get the most grass-root elected public official to be a witness as required by law.”<sup>9</sup>

In his Co-sponsorship speech, Senator Vicente C. Sotto III said that in view of a substantial number of acquittals in drug-related cases due to the varying interpretations of prosecutors and judges on Section 21 of R.A. No. 9165, there is a need for “certain adjustments so that we can plug the loopholes in our existing law” and “ensure [its] standard implementation.”<sup>10</sup> Senator Sotto explained why the said provision should be amended:

<sup>7</sup> *People v. Vicente Sipin y De Castro, supra.*

<sup>8</sup> Senate Journal, Session No. 80, 16<sup>th</sup> Congress, 1<sup>st</sup> Regular Session, June 4, 2014, p. 348.

<sup>9</sup> *Id.*

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

Numerous drug trafficking activities can be traced to operations of highly organized and powerful local and international syndicates. The presence of such syndicates that have the resources and the capability to mount a counter-assault to apprehending law enforcers makes the requirement of Section 21(a) impracticable for law enforcers to comply with. It makes the place of seizure extremely unsafe for the proper inventory and photograph of the seized illegal drugs.

x x x x

Section 21(a) of RA 9165 need to be amended to address the foregoing situation. We did not realize this in 2002 where the safety of the law enforcers and other persons required to be present in the inventory and photography of seized illegal drugs and the preservation of the very existence of seized illegal drugs itself are threatened by an immediate retaliatory action of drug syndicates at the place of seizure. The place where the seized drugs may be inventoried and photographed has to include a location where the seized drugs as well as the persons who are required to be present during the inventory and photograph are safe and secure from extreme danger.

It is proposed that the physical inventory and taking of photographs of seized illegal drugs be allowed to be conducted either in the place of seizure of illegal drugs or at the nearest police station or office of the apprehending law enforcers. The proposal will provide effective measures to ensure the integrity of seized illegal drugs since a safe location makes it more probable for an inventory and photograph of seized illegal drugs to be properly conducted, thereby reducing the incidents of dismissal of drug cases due to technicalities.

**Non-observance of the prescribed procedures should not automatically mean that the seizure or confiscation is invalid or illegal, as long as the law enforcement officers could justify the same and could prove that the integrity and the evidentiary value of the seized items are not tainted. This is the effect of the inclusion in the proposal to amend the phrase "justifiable grounds." There are instances where there are no media people or representatives from the DOJ available and the absence of these witnesses should not automatically invalidate the drug operation conducted. Even the presence of a public local elected official also is sometimes impossible especially if the elected official is afraid or scared.<sup>11</sup>**

While the PDEA concedes that *Lim* squarely falls on the application of Section 21, R.A. No. 9165 prior to its amendment, the PDEA, likewise, insists that the ruling in *Lim* — which requires three (3) witnesses to be present during the physical inventory and taking of photograph — should not apply to cases that happened after the effectivity of R.A. No. 10640. 9

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<sup>11</sup> Emphasis added.

Suffice it to state that the ruling in *Lim* is a contemporaneous construction of the original Section 21 of R.A. No. 9165 and its IRR. Judicial interpretation of a statute constitutes part of the law as of the date it was originally passed, since the Court's construction merely establishes the contemporaneous legislative intent that the interpreted law carried into effect.<sup>12</sup> Such judicial doctrine does not amount to the passage of a new law, but consists merely of a construction or interpretation of a pre-existing one.<sup>13</sup> Significantly, the mandatory policy in *Lim* was adopted precisely to address the pervasive issue of non-compliance with Section 21 of R.A. No. 9165, as amended by R.A. No. 10640, thus:

To conclude, judicial notice is taken of the fact that arrests and seizures related to illegal drugs are typically made without a warrant; hence, subject to inquest proceedings. Relative thereto, Section 1 (A.1.10) of the Chain of Custody Implementing Rules and Regulations directs:

A.1.10. Any justification or explanation in cases of noncompliance with the requirements of Section 21 (1) of R.A. No. 9165, as amended, shall be clearly stated in the sworn statements/affidavits of the apprehending/seizing officers, as well as the steps taken to preserve the integrity and evidentiary value of the seized/confiscated items. Certification or record of coordination for operating units other than the PDEA pursuant to Section 86 (a) and (b), Article IX of the IRR of R.A. No. 9165 shall be presented.

While the above-quoted provision has been the rule, it appears that it has not been practiced in most cases elevated before Us. Thus, in order to weed out early on from the courts' already congested docket any orchestrated or poorly built up drug-related cases, the following should henceforth be enforced as a mandatory policy: x x x<sup>14</sup>

**WHEREFORE**, the Letter dated October 17, 2018 of the Philippine Drug Enforcement Agency is **NOTED**, and the request for a detailed and more precise guideline of the ruling in *People v. Romy Lim y Miranda* is **DENIED** for lack of merit.

The Court further Resolved to **NOTE** the Letter dated November 6, 2018 of C/Supt. Rufino A. Martin, MBA, CSMS, Officer-in-Charge, Davao Prison and Penal Farm, B. E. Dujali, Davao del Norte, informing the Court that pursuant to the Decision with Order of Release and Entry of Judgment, all dated September 4, 2018, Person Deprived of Liberty (PDL) Romy Lim y Miranda (No. D214P-0106) was immediately released from confinement at the Davao Prison and Penal Farm on November 5, 2018.” Jardeleza, J.,

<sup>12</sup> *Eagle Realty Corp. vs. Republic*, G.R. No. 151424, July 31, 2009.


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

<sup>14</sup> *People of the Philippines v. Romy Lim y Miranda*, G.R. No. 231989, September 4, 2018.



no part and on official leave. Tijam, Gesmundo and Hernando, JJ., on  
official leave. (adv43)

Very truly yours,

  
**EDGAR O. ARICHETA**  
Clerk of Court

-over-

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THE PRESIDING JUDGE (reg)  
Regional Trial Court, Branch 25  
Cagayan de Oro City  
(CR 2010-1073 & 2010-1074)

G.R. No. 231989  
kat 11/13/18 (URes43) 11/21/18