



Republic of the Philippines  
Supreme Court  
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated August 27, 2020 which reads as follows:*

***“G.R. No. 249318 (Jerry Iglesia y Jontilla v. People of the Philippines)***

RESOLUTION

Petitioner faults the Court of Appeals for affirming the trial court’s verdict of conviction against him for violation of Sections 11 and 12, Article II of Republic Act No. 9165 (RA 9165), otherwise known as the Comprehensive Dangerous Drugs Act of 2002. There were obvious lapses in compliance with Section 21 of RA 9165 which were not explained by the prosecution. Notably, the inventory and photographing of the seized items were done without the presence of a media representative and a representative of the Department of Justice (DOJ).<sup>1</sup>

We acquit.

In cases involving violations of RA 9165, the *corpus delicti* refers to the drug itself. It is, therefore, the duty of the prosecution to prove that the drugs seized from the accused were the same items presented in court.<sup>2</sup>

Section 21 of RA 9165 lays down the chain of custody rule or the procedure in handling dangerous drugs and instruments or

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<sup>1</sup> CA rollo, pp. 38-61.

<sup>2</sup> *People v. Bumanglag*, G.R. No. 22884, August 19, 2019.

paraphernalia starting from their seizure until they are finally presented as evidence in court, thus:

**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 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;** (Emphasis supplied)

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In relation thereto, Section 21 (a), Article II of the Implementing Rules and Regulations (IRR) of RA 9165 ordains:

**Section 21. (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)

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Thus, the conduct of physical inventory (*which includes the marking of the items by seizing police officers*)<sup>3</sup> and photographing of the seized items must be done in the presence of (1) the accused or the person/s from whom such items were confiscated and/or seized, or his or her representative or counsel, (2) **a representative from the media and the DOJ**, and (3) any elected public official, who shall sign the copies of the inventory and be given a copy thereof.<sup>4</sup>

Here, prosecution witness SPO1 Ian Piano (SPO1 Piano) testified that only barangay officials were present during the inventory or listing portion but not during the marking, thus:

- Q :           After PO Bata-anon has placed these markings on the specimen, what did you do next?
- A :           After the markings we immediately summoned the barangay officials to witness the inventory.
- Q :           Did the barangay officials arrived as summoned?
- A :           Yes, ma'am.
- Q :           How many minutes after they were summoned and the arrival of the barangay officials if you can recall?
- A :           More or less 10 minutes.

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- Q :           And what document if any was prepared during the conduct of the inventory?
- A :           We prepared a receipt/inventory of property seized.

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- Q :           Other than PO3 Bata-anon who else signed this document, if there be any?
- A :           We have the two witnesses, Barangay Captain Friday Solinap and Kagawad Federico Pillo.<sup>5</sup>

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<sup>3</sup> *People v. Lumaya*, 827 Phil. 473 (2018); *People v. Salvador*, 726 Phil. 389 (2014).

<sup>4</sup> *People v. Rosales*, G.R. No. 233656, October 2, 2019.

<sup>5</sup> *Rollo*, pp. 76-101.

- Q : You mentioned in your direct that barangay officials were only summoned after the markings were already made, correct?
- A : Yes, sir.
- Q : So you would agree with me if I say that the barangay officials have no personal knowledge as to the person from whom the items were recovered from?
- A : Yes, sir.
- Q : They likewise have no personal knowledge as to who made the markings?
- A : Yes, sir.
- Q : They were only asked to witness the inventory, meaning the recording?
- A : Yes, sir.
- Q : But they have no knowledge as to the recovery, markings and as to the person?
- A : Yes, sir.<sup>6</sup>

The conduct of the inventory was only witnessed by Barangay Captain Friday Solinap (Brgy. Captain Solinap) and Kagawad Federico Pillo (Kagawad Pillo). The witnesses did not mention that a DOJ representative and a media representative were themselves also present during the inventory and taking of photographs. The prosecution failed to acknowledge this deficiency. The prosecution also failed to provide any justification for the absence of these witnesses so as to trigger the saving clause in Section 21.

To stress, the Implementing Rules and Regulations of RA 9165 offers a saving clause which allows leniency whenever justifiable grounds exist warranting deviation from established protocol so long as the integrity and evidentiary value of the seized items are properly preserved. Section 21 (a) of the Implementing Rules and Regulations of RA 9165 contains the following proviso:

Section 21. (a) xxx Provided, further, that **non-compliance with these requirements under justifiable grounds**, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items.

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

*People v. Jugo*<sup>7</sup> specified the twin conditions for the saving clause to apply:

[F]or 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. Moreover, 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.

Here, neither PO3 Bata-anon nor SPO1 Piano offered any explanation for the lapse, which would have excused the buy-bust team's failure to comply with the chain of custody rule. Thus, the condition not having been complied, the saving clause did not become operational.

In *Valencia v. People*,<sup>8</sup> the Court declared that while a perfect chain may be impossible to obtain at all times, arresting officers are still obliged, should they be unable to comply with the procedures laid down under Section 21 of RA 9165 and its implementing rules, 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.

In *People v. Macud*,<sup>9</sup> the Court acquitted therein accused for the prosecution's failure to offer any justifiable explanation for the absence of the insulating witnesses required by law. This effectively invalidated the seizure of and custody over the seized items, since the items' identity and integrity had been conclusively deemed to have been compromised.

What is required by Section 21 of RA 9165 and Section 21 (a) of its Implementing Rules and Regulations is the physical presence of the insulating witnesses during the actual marking, inventory, and taking of photographs – not after. In *People v. Saunar*,<sup>10</sup> the Court underscored the significance of the presence of third-party witnesses during the actual seizure and marking (which must immediately follow seizure) of the seized items from the accused. For the presence of these insulating witnesses, guards

<sup>7</sup> 824 Phil. 743, 751-753 (2018).

<sup>8</sup> 725 Phil. 268, 286 (2014).

<sup>9</sup> 822 Phil. 1016, 1041 (2017).

<sup>10</sup> 816 Phil. 482 (2017)

against the evils of switching, planting, or contamination of evidence.

Here, SPO1 Piano testified that Brgy. Captain Solinap and Kagawad Pillo were only summoned after the markings were made on the seized items and they only arrived after more or less ten (10) minutes.<sup>11</sup> Clearly, not one of the three (3) insulating witnesses actually saw the marking of the seized items. No valid reason was offered for this omission. This is a clear violation of the requirements under Section 21 of RA 9165 and its implementing rules which casts serious doubt on the identity of the *corpus delicti*.

In *People v. Cabezudo*,<sup>12</sup> the Court found, among others, that the arresting officers miserably failed to comply with the chain of custody rule because two (2) of the three (3) required witnesses were not present during the actual inventory and photographing of the seized items but rather were only called-in to sign after the inventory receipt was already completed.

Consequently, in light of the prosecution's failure to provide justifiable grounds for non-compliance with the chain of custody rule, and the failure to justify the deviation so as to prove the identity and integrity of the alleged *shabu* and paraphernalia, petitioner's acquittal is in order.

**WHEREFORE**, petitioner **JERRY IGLESIA Y JONTILLA** is **ACQUITTED** of violation of Sections 11 and 12, Article II of Republic Act No. 9165. The Court **DIRECTS** the Director of the Bureau of Corrections, New Bilibid Prison, Muntinlupa City: (a) to cause the immediate release of Jerry Iglesia y Jontilla from custody unless he is being held for some other lawful cause; and (b) to inform the Court of the action taken within five (5) days from notice.

Let entry of judgment immediately issue.

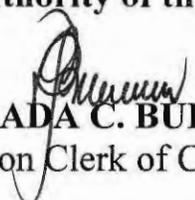
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<sup>11</sup> *Rollo*, pp. 76-101.

<sup>12</sup> G.R. No. 232357, November 28, 2018.

**SO ORDERED.”**

**By authority of the Court:**

  
**LIBRADA C. BUENA**  
Division Clerk of Court

by:

**MARIA TERESA B. SIBULO**  
Deputy Division Clerk of Court  
**115-B2**

PUBLIC ATTORNEY’S OFFICE  
Regional Special and Appealed Cases Unit  
Counsel for Petitioner  
3<sup>rd</sup> Floor, Taft Commercial Center  
Metro Colon Carpark, Osmeña Blvd.  
6000 Cebu City

Court of Appeals  
6000 Cebu City  
(CA-G.R. CR No. 03066)

The Solicitor General  
1229 Makati City

Mr. Jerry J. Iglesia (x)  
Petitioner  
c/o The Director General  
Bureau of Corrections  
1770 Muntinlupa City

The Presiding Judge  
Regional Trial Court, Branch 47  
6100 Bacolod City  
(Crim. Case Nos. 11-35511 & 35512)

The Director General (x)  
Bureau of Corrections  
1770 Muntinlupa City

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Judgment Division (x)  
Supreme Court

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