



REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated **13 January 2021** which reads as follows:*

“G.R. No. 249259 (People of the Philippines vs. Romero Ferma, Jr. y Viado @ “Bobby” * and Agnes Espinosa y Nuñez). — Appellants were charged with violation of Section 5, Republic Act No. 9165 (RA 9165) on April 7, 2016. Thus, the applicable law is RA 9165, as amended by Republic Act No. 10640 (RA 10640). Section 21 of RA 9165, as amended, prescribes the standard in preserving the *corpus delicti* in illegal drug cases, *viz.*:

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 dangerous drugs, controlled precursors and essential chemicals, instruments/paraphernalia and/or laboratory equipment shall, immediately after seizure and confiscation, conduct a physical inventory of the seized items and photograph the same **in the presence of the accused or the persons from whom such items were confiscated and/or seized, or his/her representative or counsel, with an elected public official and a representative of the National Prosecution Service or the media** who shall be required to sign the copies of the inventory and be given a copy thereof: *Provided,* That the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest

* “Romero Ferma, Jr. y Viado” is also referred to as “Romeo Ferma, Jr. y Viado” in some parts of the rollo, and that his alias is also spelled as “Boboy” in some parts of the rollo.

police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures: *Provided, finally*, That noncompliance of these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures and custody over said items. (Emphasis supplied)

x x x x

The IRR of RA 9165 further mandates:

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: x x x 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)

x x x x

In illegal drugs cases, the drug itself constitutes the *corpus delicti* of the offense. The prosecution, therefore, is tasked to establish that the substance illegally possessed by petitioners is the same substance presented before the court.¹ It is the prosecution's onus to prove every link in the chain of custody – from the time the drug is seized from the accused, until the time it is presented in court as evidence.² The saving clause under Section 21 (a), Article II, RA 9165 IRR ordains that non-compliance with the prescribed requirement shall not invalidate the seizure and custody of the items provided that such non-compliance is justified and the integrity and evidentiary value of the seized items are properly preserved by the apprehending officers.³

Generally, there are four (4) links in the chain of custody of the seized illegal drug: (i) its seizure and marking, if practicable, from the accused, by the apprehending officer; (ii) its turnover by the apprehending officer to the investigating officer; (iii) its turnover by the investigating officer to the forensic chemist for examination; and, (iv) its turnover by the forensic chemist to the court.⁴

The **first link** refers to the seizure and marking which must be done immediately at the place of the arrest. Too, it includes the physical inventory

¹ *People v. Miranda*, G.R. No. 218126, July 10, 2019.

² *People v. Dumagay*, 825 Phil. 726, 739 (2018).

³ *People v. Frias*, G.R. No. 234686, June 10, 2019.

⁴ *People v. De Leon*, G.R. No. 227867, June 26, 2019.

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and taking of photograph of the seized items which should be done in the presence of the accused or his/her representative or counsel, together with an elected public official and a representative of the Department of Justice (DOJ) or the media.

Here, the first link of the chain of custody had already been breached early on. Based on the testimonies of the prosecution witnesses, the inventory was done at the barangay hall of Barangay Carmona, Makati City and only in the presence of Barangay Captain Joselito Salvador. The prosecution acknowledged that the arresting officers were not able to secure the presence of a representative of either the DOJ or the media as required by RA 9165, as amended. The prosecution though reasoned that it was so because the arresting officers did not have the contact numbers of said representatives.

In *People v. Paz*,⁵ the Court acquitted Mark Andrew Paz because only the *barangay kagawad* was present. Noticeably absent was a representative from the DOJ or the media.

Likewise, in *People v. Vistro*,⁶ the Court acquitted Jonathan Vistro because only a barangay official witnessed the inventory, thus:

In this case, while a barangay official signed as a witness in the Certificate of Inventory, there was no mention that the inventory and photograph of the seized *shabu* was done in the presence of representatives from the media and the DOJ. **The arresting officer merely testified that the buy-bust team marked the seized *shabu* in the police station since the barangay captain and other officials of the place where the crime was committed were relatives of the appellant. He failed to provide a justifiable ground for the absence of the representatives from the media and the DOJ during the inventory and photograph of the seized *shabu* at the police station. The failure of the prosecution to secure the attendance of these witnesses, without providing any reasonable justification therefor, creates doubt as to the integrity and evidentiary value of the seized *shabu*. Thus, there is no recourse for this Court other than to reverse the conviction of appellant.** (Emphasis supplied)

The Court has repeatedly stressed that the presence of the required insulating witnesses at the time of the inventory is mandatory. Under the law, the presence of the insulating witnesses is a high prerogative requirement, the non-fulfillment of which casts serious doubts upon the integrity of the *corpus delicti* itself - the very prohibited substance itself - and for that reason imperils the prosecution's case.⁷

⁵ G.R. No. 233466, August 7, 2019.

⁶ G.R. No. 225744, March 6, 2019.

⁷ *People v. Manansala*, G.R. No. 229509, July 03, 2019.

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Nonetheless, failure to strictly comply with rules of procedure does not *ipso facto* invalidate or render void the seizure and custody over the items so long as the prosecution is able to show that “(a) there is justifiable ground for non-compliance; and (b) the integrity and evidentiary value of the seized items are properly preserved.”⁸

Yet, the Court is not convinced by the prosecution’s flimsy excuse that the arresting officers did not have the contact numbers of the representatives from the DOJ or media. This, in fact, reflects their nonchalant attitude towards their duty to strictly comply with the chain of custody rule.

We thus find that the prosecution utterly failed to 1) prove the *corpus delicti* of the crime especially since the amount involved in this case is minuscule, the likelihood of tampering, loss or mistake with respect to an exhibit is greatest when the exhibit is small and is one that has physical characteristics fungible in nature and similar in form to substances familiar to people in their daily lives;⁹ (2) establish an unbroken chain of custody of the seized drugs; and (3) offer any explanation why the Chain of Custody Rule was not complied with. Accordingly, the Court is constrained to acquit appellants based on reasonable doubt.

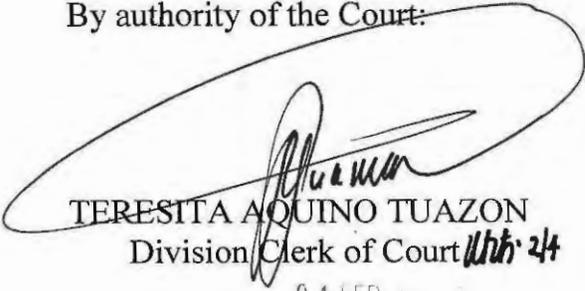
WHEREFORE, the appeal is **GRANTED**. The Decision dated June 11, 2018 of the Court of Appeals in CA-G.R. CR HC No. 08831 is **REVERSED** and **SET ASIDE**.

Appellants **ROMERO FERMA, JR. y VIADO @ Bobby** and **AGNES ESPINOSA y NUÑEZ** are **ACQUITTED**. The Director of the Bureau of Corrections, Muntinlupa City is ordered to a) immediately release appellants from custody unless they are being held for some other lawful cause; and b) submit a report on the action taken within five (5) days from notice.

Let entry of final judgment be issued immediately.

SO ORDERED.

By authority of the Court:



TERESITA AQUINO TUAZON
Division Clerk of Court *Wh. 44*

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⁸ Supra note 2.

⁹ *People v. Pagsigan*, G.R. No. 232487, September 03, 2018.

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HON. PRESIDING JUDGE (reg)
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