



REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated **01 March 2021** which reads as follows:*

“G.R. No. 251436 (*People of the Philippines v. Ramil Ordinario y Ocasion*). – The Court resolves to **NOTE** the **SEPARATE MANIFESTATIONS** (In Lieu of Supplemental Briefs) filed by counsel for accused-appellant dated November 5, 2020 and by the Office of the Solicitor General dated December 2, 2020.

We acquit.

In Illegal Drugs cases, the drug itself constitutes the *corpus delicti* of the offense. The prosecution, therefore, must establish that the substance illegally sold and possessed by the accused is the same substance presented in court. Proof beyond reasonable doubt demands that unwavering exactitude be observed in establishing the *corpus delicti*. The chain of custody rule performs this function as it ensures that unnecessary doubts concerning the identity of the evidence are removed.¹

Here, accused-appellant Ramil Ordinario y Ocasion (accused-appellant) was charged with and convicted of Illegal Sale and Illegal Possession of Dangerous Drugs committed on April 10, 2015. The governing law, therefore, is Republic Act No. 9165 (RA 9165), as amended by Republic Act No. 10640 (RA 10640).² Section 21 of RA 9165, as amended by RA 10640 provides:

¹ See *People v. Leaño*, G.R. No. 246461, July 28, 2020.

² “AN ACT TO FURTHER STRENGTHEN THE ANTI-DRUG CAMPAIGN OF THE GOVERNMENT, AMENDING FOR THE PURPOSE SECTION 21 OF REPUBLIC ACT NO. 9165, OTHERWISE

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 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.³

x x x x

To sufficiently prove the guilt of the accused beyond reasonable doubt, the prosecution must account for each link in the chain of custody:

First, the seizure and marking of the illegal drug recovered from the accused by the apprehending officer;

Second, the turnover of the illegal drug seized by the apprehending officer to the investigating officer;

Third, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and

Fourth, the turnover and submission of the marked illegal drug seized by the forensic chemist to the court.⁴

Notably, the prosecution failed to establish an unbroken chain of custody in the present case.

We focus on the first link.

KNOWN AS THE 'COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002,'" approved on July 15, 2014.

³ Amendment to RA 9165 (Comprehensive Dangerous Drugs Act of 2002), RA 10640, July 15, 2014.

⁴ See *People v. Victoria*, G.R. No. 238613, August 19, 2019.

The **first link** in the chain of custody speaks of seizure and marking which should be done immediately at the place of arrest. It also includes the physical inventory and photograph of the seized items.⁵

Section 21, Article II of RA 9165, as amended by RA 10640, requires:

(1) the seized items be inventoried and photographed immediately after confiscation at the place of seizure or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable;

(2) the physical inventory and photographing must be done in the presence of (a) the accused or his/her representative or counsel, (b) an elected public official, and (c) a representative of the National Prosecution Service or the media; and

(3) the accused or his/her representative and all of the aforesaid witnesses shall be required to sign the copies of the inventory and be given a copy thereof.⁶

The law requires the presence of the insulating witnesses to remove any suspicion of switching, planting, or contamination of evidence.⁷ Section 21 of RA 9165, as amended by RA 10640, nevertheless, provides that non-compliance with the requirement under justifiable grounds shall not render invalid the seizure and custody over drug items so long as their integrity and evidentiary value were duly preserved.

Here, Police Officer 1 Jonathan Bueno (PO1 Bueno) testified that only Barangay Kagawad Felix Santos and accused-appellant were present during the inventory and photographing of the seized items at the barangay hall of Barangay Ugong:

Q What happened next?

A After that [referring to the marking at the place of arrest], we called for a representative from the media and barangay elected officials.

x x x x

Q What about the representative from the DOJ?

A None, ma'am.

Q Why?

A I do not know anybody from the DOJ.⁸

x x x x

⁵ See *People v. Lacdan*, G.R. No. 232161, August 14, 2019.

⁶ See *Tañamor v. People*, G.R. No. 228132, March 11, 2020.

⁷ See *People v. Esguerra*, G.R. No. 243986, January 22, 2020.

⁸ TSN, June 27, 2017, p. 9.

Q How about the barangay officials which was only a few meters away from the target place?

A Our chief informed us to proceed to the barangay hall and conduct the inventory of seized evidence there and for the protection of the accused and integrity of the evidence.⁹

x x x x

Q What about the representative from the DOJ?

A We did not call for representative from DOJ because our team leader PO3 Allan Caponga instructed us to conduct inventory, sir.

Q Who were present when you conducted the inventory?

A Barangay Kagawad Felix Santos, the suspect Ramil, me and my fellow operatives, Sir.¹⁰

Police Office 2 Marvin Santos corroborated PO1 Bueno's testimony:

Q The representative of the media and the National Prosecution Service, why they were not around when pictures of the evidence were taken?

A The media representative was not available, sir.

Q What about the National Prosecution Service?

A We have no contact numbers for the fiscal's office, sir.¹¹

Curiously, it was only after the marking that the apprehending officers sought the presence of the media and the barangay officials. When it became apparent that no representative from the media could make it, reason and diligence dictate that the team should have called for an alternative representative from the National Prosecution Service (NPS).¹²

As it was, however, the buy bust team did not coordinate with the NPS for the flimsiest of reasons - none of them knew the contact number of the NPS. Certainly, this is not a justifiable ground under Section 21 of RA 9165, as amended. Jurisprudence requires genuine and earnest efforts in contacting the insulating witnesses to justify deviation from the chain of custody rule. Mere statements of unavailability, absent actual serious attempts to contact the required witnesses, are unacceptable grounds for non-compliance.¹³

⁹ TSN, June 27, 2016, p. 10.

¹⁰ TSN, September 20, 2016, p. 10.

¹¹ TSN, October 3, 2016, p. 7.

¹² The NPS falls under the DOJ. (See Section 1 of Presidential Decree No. 1275, entitled "REORGANIZING THE PROSECUTION STAFF OF THE DEPARTMENT OF JUSTICE, REGIONALIZING THE PROSECUTION SERVICE, AND CREATING THE NATIONAL PROSECUTION SERVICE" [April 11, 1978] and Section 3 of RA 10071, entitled "AN ACT STRENGTHENING AND RATIONALIZING THE NATIONAL PROSECUTION SERVICE" otherwise known as the "PROSECUTION SERVICE ACT OF 2010" [lapsed into law on April 8, 2010].

¹³ See *People v. Gabunada*, G.R. No. 242827, September 9, 2019.

In *People v. Doctolero, Jr.*,¹⁴ the Court acquitted therein accused-appellant Alfredo Doctolero, Jr. for non-compliance with the first link in the chain of custody rule. Specifically, the inventory and photograph of the seized items were conducted in the presence of the elected public officials only. No explanation was offered for the absence of a representative from the media or the NPS and no testimony was offered to prove the genuine and earnest efforts exerted to secure their presence.

All told, the prosecution failed to establish accused-appellant's guilt for either Illegal Possession or Illegal Sale of Dangerous Drugs by proof beyond reasonable doubt. Accused-appellant's acquittal must, perforce, follow.

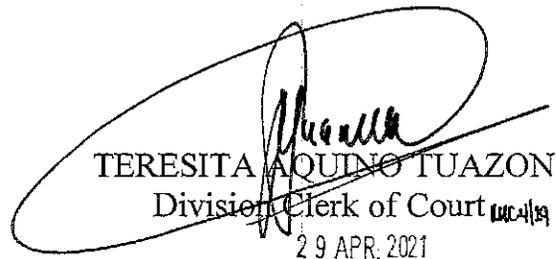
WHEREFORE, the appeal is **GRANTED** and the Decision dated January 31, 2019 of the Court of Appeals in CA-G.R. CR-HC No. 10111, **REVERSED** and **SET ASIDE**.

Ramil Ordinario y Ocasion is **ACQUITTED** of violations of Sections 5 and 11 of Republic Act No. 9165, as amended by Republic Act No. 10640. The Director of the Bureau of Corrections, Muntinlupa City is **DIRECTED** to cause the immediate release of Ramil Ordinario y Ocasion from custody unless he is being held for some other lawful cause, and to submit his report on the action taken within five (5) days from notice.

Let an entry of judgment immediately issue.

SO ORDERED." (Rosario, J., on leave)

By authority of the Court:


TERESITA AQUINO TUAZON
Division Clerk of Court
29 APR. 2021

¹⁴ G.R. No. 243940, August 20, 2019.

PUBLIC ATTORNEY'S OFFICE (reg)
Special & Appealed Cases Service
Department of Justice
PAO-DOJ Agencies Building
NIA Road corner East Avenue
1104 Diliman, Quezon City

OFFICE OF THE SOLICITOR GENERAL (reg)
134 Amorsolo Street
1229 Legaspi Village
Makati City

RAMIL ORDINARIO y OCASION (x)
Accused-Appellant
c/o The Director
Bureau of Corrections
1770 Muntinlupa City

THE DIRECTOR (x)
Bureau of Corrections
1770 Muntinlupa City

HON. PRESIDING JUDGE (reg)
Regional Trial Court, Branch 154
1605 Pasig City
(Crim. Case Nos. 20160-D-PSG and 20161-D-PSG)

JUDGMENT DIVISION (x)
Supreme Court, Manila

PUBLIC INFORMATION OFFICE (x)
LIBRARY SERVICES (x)
[For uploading pursuant to A.M. No. 12-7-1-SC]

OFFICE OF THE CHIEF ATTORNEY (x)
OFFICE OF THE REPORTER (x)
PHILIPPINE JUDICIAL ACADEMY (x)
Supreme Court, Manila

COURT OF APPEALS (x)
Ma. Orosa Street
Ermita, 1000 Manila
CA-G.R. CR-HC No. 10111

Please notify the Court of any change in your address.
GR251436. 03/01/2021A(62)URES(a) *14/4*