



REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, Second Division, issued a Resolution dated 15 March 2021 which reads as follows:

“G.R. No. 254604 (*Mario Time y Flores a.k.a. “Villamor Time” v. People of the Philippines*) — We acquit.

In the prosecution of Illegal Possession of Dangerous Drugs, the following elements must be proved: (1) the accused was in possession of an item or an object identified to be a prohibited or regulated drug, (2) such possession was not authorized by law, and (3) the accused was freely and consciously aware of being in possession of the drug. The evidence of the *corpus delicti* must also be established beyond reasonable doubt.¹

The Illegal Possession of Dangerous Drugs was allegedly committed here on **April 7, 2014**. The governing law, therefore, is Republic Act No. (RA) 9165² before its amendment on July 15, 2014.³ Section 21 of RA 9165 provides the procedure to ensure the integrity of the *corpus delicti*, viz.:

X X X X

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

¹ *People v. Dela Cruz*, G.R. No. 229053, July 17, 2019.

² *Comprehensive Dangerous Drugs Act of 2002*, Republic Act No. 9165, June 7, 2002.

³ *Amendment to R.A. No. 9165 (Anti-Drug Campaign of the Government)*, Republic Act No. 10640, July 15, 2014.

and/or laboratory equipment so seized, 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;

(2) Within twenty-four (24) hours upon confiscation/seizure of dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment, the same shall be submitted to the PDEA Forensic Laboratory for a qualitative and quantitative examination;

(3) A certification of the forensic laboratory examination results, which shall be done under oath by the forensic laboratory examiner, shall be issued within twenty-four (24) hours after the receipt of the subject item/s: *Provided*, That when the volume of the dangerous drugs, plant sources of dangerous drugs, and controlled precursors and essential chemicals does not allow the completion of testing within the time frame, a partial laboratory examination report shall be provisionally issued stating therein the quantities of dangerous drugs still to be examined by the forensic laboratory: *Provided, however*, That a final certification shall be issued on the completed forensic laboratory examination on the same within the next twenty-four (24) hours;

X X X X

Its Implementing Rules and Regulations further states:

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.

(b) Within twenty-four (24) hours upon confiscation/seizure of dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment, the same shall be submitted to the PDEA Forensic Laboratory for a qualitative and quantitative examination;

(c) A certification of the forensic laboratory examination results, which shall be done under oath by the forensic laboratory examiner, shall be issued within twenty-four (24) hours after the receipt of the subject item/s: *Provided*, that when the volume of the dangerous drugs, plant sources of dangerous drugs, and controlled precursors and essential chemicals does not allow the completion of testing within the time frame, a partial laboratory examination report shall be provisionally issued stating therein the quantities of dangerous drugs still to be examined by the forensic laboratory: *Provided, however*, that a final certification shall be issued on the completed forensic laboratory examination on the same within the next twenty-four (24) hours; x x x⁴

In illegal drugs cases, the drug itself constitutes the *corpus delicti* of the offense. The prosecution is, therefore, tasked to establish that the substance illegally sold or possessed by the accused is the same substance presented in court.⁵ This is the chain of custody rule. It is the duly recorded authorized movements and custody of the seized drugs at each stage from the time of seizure or confiscation to receipt in the forensic laboratory, to safekeeping and their presentation in court for identification and destruction.

*People v. Omamos*⁶ reiterated that the following four (4) links in the chain of custody must be proved:

First, the seizure and marking, if practicable, of the dangerous drug recovered from the accused by the apprehending officer;

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

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

Fourth, the turnover and submission of the marked dangerous drug seized from the forensic chemist to the court.

We focus on the first and fourth links which petitioner asserts to have been breached.

The *first link* refers to marking, inventory, and photographing of the seized items.⁷

As part of the chain of custody procedure, RA 9165 requires that the physical inventory and photographing of the seized items be done in the presence of the accused or the person from whom the items were seized, or his representative or counsel, as well as the required insulating witnesses, namely: (a) **if prior to the amendment of RA 9165 by RA 10640, a representative from the media AND the Department of Justice (DOJ),**

⁴ *Implementing Rules and Regulations of Republic Act No. 9165, IRR of RA 9165, August 30, 2002.*

⁵ *People v. Galisim*, G.R. No. 231305, September 11, 2019.

⁶ G.R. No. 223036, July 10, 2019.

⁷ *Barayuga v. People*, G.R. No. 248382, July 28, 2020.

AND any elected public official xxx. The law requires the presence of these witnesses primarily “to ensure the establishment of the chain of custody and remove any suspicion of switching, planting, or contamination of evidence.”⁸

Here, PO1 Jerry Vintero testified that when he retrieved the plastic sachet containing white crystalline substance from petitioner’s kitchen, he immediately marked, inventoried, and photographed the same only in the presence of petitioner, Adelaida, and the barangay officials.⁹ And while the police officers did try to get representatives from Bombo Radio and the DOJ to witness the procedure, they were informed that no one from these agencies could make it on the day of the implementation of the search warrant, so they proceeded with the marking, inventory and photographing even without the presence of these two (2) insulating witnesses.

We are not convinced. 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.¹⁰ Here, other than the mere say so of the police officers concerned, the prosecution utterly failed to present actual proof that they did exert diligent efforts to comply with the required presence of a mass media representative and a DOJ representative. This notwithstanding that they knew beforehand that they were scheduled to search petitioner’s residence precisely on suspicion that he was hiding illegal drugs there. They had ample time to secure the presence of the two (2) insulating witnesses but did not.

In *People v. Doctolero, Jr.*,¹¹ the Court acquitted therein appellant Alfredo Doctolero, Jr. for non-compliance with the first link in the chain of custody rule. Specifically, the inventory and photographing of the seized items were conducted in the presence of the elected public officials only. No testimony was offered to prove the genuine and earnest efforts exerted to secure their presence.

In fine, the first link had been incipiently broken here for lack of the required witnesses during the inventory and photographing of the seized item.

We go to the *fourth link*. It refers to the turnover and submission of the dangerous drugs from the forensic chemist to the court.¹² In drug related cases, it is of paramount necessity that the forensic chemist testifies as to details pertinent to the handling and analysis of the dangerous drug submitted for examination *i.e.* when and from whom the dangerous drug was received; what identifying labels or other things accompanied it; description of the specimen; and the container it was in, as the case may be.¹³

⁸ *People v. Gutierrez*, G.R. No. 236304, November 5, 2018 (emphases supplied, citations omitted).

⁹ *Rollo*, p. 39.

¹⁰ See *People v. Gabunada*, G.R. No. 242827, September 9, 2019.

¹¹ G.R. No. 243940, August 20, 2019.

¹² *People v. Hementiza*, 807 Phil. 1017, 1026 (2017).

¹³ Board Regulation No. 1, Series of 2002: Guidelines on the Custody and Disposition of Seized Dangerous Drugs, Controlled Precursors and Essential Chemicals, and Laboratory Equipment.

Here, while forensic chemist PCI Glenn Ly Tuazon (PCI Tuazon) testified on the results of the laboratory examination, the specific tests performed on the specimen and the manner by which the same was handled under his custody, the prosecution failed to present the new evidence custodian who took the place of PCI Tuazon at the Tugearao Crime Laboratory. Notably, when the specimen was presented in court, the new evidence custodian of the facility should have testified on the identity of the specimen as well as the manner by which the specimen was kept in his or her custody. His or her testimony, therefore, is necessary to ensure that the specimen retrieved from petitioner's house is the same specimen offered in evidence.

In *People v. Dahil*,¹⁴ the Court acquitted the accused in view of the absence of the testimony of the forensic chemist on how she handled the dangerous drug from the time the item was submitted to her for examination until the same was presented in court.

All told, the prosecution failed to establish petitioner's guilt for illegal possession of dangerous drug by proof beyond reasonable doubt. Petitioner's acquittal must perforce follow.

WHEREFORE, the petition is **GRANTED** and the Decision dated July 19, 2019 in CA G.R. CR No. 41232, **REVERSED** and **SET ASIDE**. Mario Time y Flores is **ACQUITTED** of violation of Section 11 of RA 9165 on reasonable doubt in Criminal Case No. II-12059. The **BAIL BOND** posted for his provisional liberty is ordered **CANCELLED**.

Let entry of judgment immediately issue.

SO ORDERED."

By authority of the Court:

TERESITA AQUINO TUAZON
Division Clerk of Court


MA. CONSOLACION GAMINDE-CRUZADA
Deputy Division Clerk of Court *Cibdk/427*

¹⁴ 750 Phil. 212, 231 (2015).

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