



Republic of the Philippines  
Supreme Court  
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated February 26, 2020 which reads as follows:*

**“G.R. No. 245446 (*Kristine Desiree Villamil y Dela Cruz v. People of the Philippines*)**

Petitioner faults the Court of Appeals for affirming the trial court’s verdict of conviction against her for violation of Section 11, Article II of Republic Act No. 9165 (RA 9165), otherwise known as the Comprehensive Dangerous Drugs Act of 2002. There was a broken chain of custody of the allegedly confiscated dangerous drug. Markedly, the inventory and photographing of the purported illegal drug were done without the presence of a media representative, a representative of the Department of Justice (DOJ), and an elected public official.<sup>1</sup>

The petition is meritorious.

Section 21, Article II of RA 9165 lays down the procedure in handling dangerous drugs starting from their seizure until they are finally presented as evidence in court. This makes up the **chain of custody rule**.<sup>2</sup>

Paragraph 1, Section 21, Article II of RA 9165 reads:

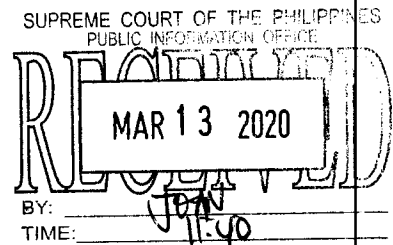
**Section 21. Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment.** – The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as

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<sup>1</sup> Rollo, pp. 18-24.

<sup>2</sup> *People v. Frias*, G.R. No. 234686, June 10, 2019.



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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This provision is related to Section 21 (a), Article II of the Implementing Rules and Regulations (IRR) of RA 9165:

- (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)

On July 15, 2014, RA 10640 was approved, amending Paragraph 1, Section 21, Article II of RA 9165 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 person/s from whom such items were confiscated and/or**

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**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.

Hence, under the present law, the conduct of physical inventory 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/her representative or counsel, (2) with an elected public official, and (3) a representative of the National Prosecution Service or the media who shall sign the copies of the inventory and be given a copy thereof.<sup>3</sup>

Here, it is undisputed that the inventory and photographing of the alleged dangerous drug seized from petitioner were not done in the presence of an elected public official and a representative of the National Prosecution Service or the media.

To be sure, it is the prosecution who has the burden of proof to show valid cause for non-compliance with the procedure laid down in Section 21, Article II of RA 9165, as amended. It has the positive duty to establish observance thereto in such a way that, during the trial court proceedings, it must acknowledge and justify any perceived anomalies from the requirements of the law. Undoubtedly, the prosecution's failure to follow the required procedure must be sufficiently explained and proven as a fact, in accordance with the rules on evidence. It is required from the apprehending officers not only to mention a justified ground but also to clearly state such ground in their sword affidavit, together with a statement regarding the steps they took to preserve the integrity of the seized items. A stricter adherence to the requirements laid down by Section 21, Article II of RA 9165, as amended, is necessary where the quantity of the dangerous drug seized is miniscule, since it is highly susceptible to planting, tampering, or alteration.<sup>4</sup>

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<sup>3</sup> *People of the Philippines v. Charles Rosales y Permejo*, G.R. No. 233656, October 2, 2019. (Emphasis supplied)

<sup>4</sup> *Id.*



Here, the prosecution utterly failed not only to acknowledge but also to offer an acceptable excuse for its deviation from the prescribed procedure. This is undeniably a serious breach of the chain of custody rule which warrants a verdict of acquittal.<sup>5</sup>

In *People v. Seguinte*, the Court acquitted the accused because the prosecution's evidence was totally bereft of any showing that a representative from the DOJ was present during the inventory and photographing. The Court keenly noted that the prosecution failed to recognize this particular deficiency. The Court, thus, concluded that this lapse, among others, effectively produced serious doubts on the integrity and identity of the *corpus delicti* especially in the face of allegation of frame up.<sup>6</sup>

The Court likewise acquitted the accused in the recent case of *People of the Philippines v. Charles Rosales y Permejo*. There, the prosecution failed to give a justifiable explanation as to why the marking, inventory, and photographing of the seized dangerous drugs were not made in the presence of a representative from the media and the DOJ.<sup>7</sup>

So must it be.

**ACCORDINGLY**, the petition is **GRANTED**. The Decision dated August 9, 2018 of the Court of Appeals in CA-G.R. CR No. 39784 is **REVERSED** and **SET ASIDE**.

Petitioner **KRISTINE DESIREE VILLAMIL Y DELA CRUZ** is **ACQUITTED** of violation of Section 11, Article II of Republic Act No. 9165. The Court **DIRECTS** the Director of the Correctional Institution for Women, Mandaluyong City: (a) to cause the immediate release of Kristine Desiree Villamil y Dela Cruz from custody unless she 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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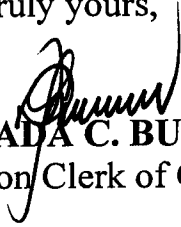
<sup>5</sup> *Id.*

<sup>6</sup> G.R. No. 218253, June 20, 2018.

<sup>7</sup> G.R. No. 233656, October 2, 2019.

**SO ORDERED.” J. Reyes, Jr, J., on official leave.**

Very truly yours,

  
**LIBRADA C. BUENA**  
Division Clerk of Court <sup>16</sup>  
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(CA-G.R. CR No. 39784)

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The Hon. Presiding Judge  
Regional Trial Court, Branch 209  
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