



REPUBLIC OF THE PHILIPPINES  
SUPREME COURT  
Manila

SECOND DIVISION

**NOTICE**

Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated **16 June 2021** which reads as follows:*

**“G.R. No. 250475 (*Edgar Inocencio y Viterbo v. People of the Philippines*). – We affirm.**

Petitioner Edgar Inocencio y Viterbo (petitioner) was charged with Illegal Possession of Dangerous Drugs and Illegal Possession of Drug Paraphernalia allegedly committed on August 15, 2013. The governing law, therefore, is Republic Act No. 9165 (RA 9165)<sup>1</sup> before its amendment on July 15, 2014.<sup>2</sup>

In *Tumabini v. People*,<sup>3</sup> the Court clarified that Section 21 of RA No. 9165 applies whether the drugs were seized either in a buy-bust operation or pursuant to a search warrant. A plain reading of the law shows that it applies as long as there has been a seizure and confiscation of drugs. There is nothing in the statutory provision which states that it is only applicable when there is a warrantless seizure in a buy-bust operation. Thus, it should be applied in every situation when an apprehending team seizes and confiscates drugs from an accused, whether through a buy-bust operation or through a search warrant. The only recognizable difference between seizure and confiscation of drugs

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<sup>1</sup> Entitled “An Act Instituting the Comprehensive Dangerous Drugs Act of 2002, Repealing Republic Act No. 6425, Otherwise Known as the Dangerous Drugs Act of 1972, as Amended, Providing Funds Therefor, and for Other Purposes,” approved on June 7, 2002.

<sup>2</sup> Republic Act No. 10640, entitled “An Act to Further Strengthen the Anti-Drug Campaign of the Government, Amending for the Purpose Section 21 of Republic Act No. 9165, Otherwise Known as the “Comprehensive Dangerous Drugs Act of 2002,” approved on July 15, 2014.

<sup>3</sup> G.R. No. 224495, February 19, 2020.

pursuant to a search warrant and a buy-bust operation is the venue of the physical inventory and taking of photographs of the said drugs,<sup>4</sup> thus:

When the drugs are seized pursuant to a search warrant, then the physical inventory and taking of photographs shall be conducted at the place where the said search warrant was served. In contrast, when the drugs are seized pursuant to a buy-bust operation or a warrantless seizure, then these can be conducted at the nearest police station or at the nearest office of the apprehending team. Other than that, there is no other difference between seizure and confiscation of drugs with a search warrant and without it (such as a buy-bust operation). **Consistent with Sec. 21 of R.A. No. 9165, its IRR does not suspend the application of the chain of custody rule simply because the drugs were seized pursuant to a search warrant.** Thus, the witnesses under the law are required to be present. Again, the only difference is with respect to the venue of the inventory and taking of photographs.<sup>5</sup> (emphasis in the original)

In *Illegal Possession of Dangerous Drugs and Illegal Possession of Drug Paraphernalia*, it is essential that the identity of the prohibited drugs and/or drug paraphernalia be established beyond reasonable doubt, considering that the prohibited drug and/or drug paraphernalia form an integral part of the *corpus delicti* of the crime/s. The prosecution has to show an unbroken chain of custody over the dangerous drugs and/or drug paraphernalia.<sup>6</sup> Thus, in order to obviate any unnecessary doubts on the identity of the dangerous drugs and/or drug paraphernalia on account of switching, planting, or contamination of evidence, the prosecution must account for *each link* of the chain:<sup>7</sup> *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.<sup>8</sup>

In this case, the chain of custody was preserved.

The *first link* refers to the seizure and marking which must be done immediately where the search warrant was served.<sup>9</sup> Too, it includes the physical inventory 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) and/or the media.

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<sup>4</sup> *Buasan v. People*, G.R. No. 232476 (Notice), November 9, 2020.

<sup>5</sup> *Id.*

<sup>6</sup> *People v. Lumaya*, 827 Phil. 473, 484 (2018).

<sup>7</sup> *Id.*

<sup>8</sup> *People v. Dela Torre*, G.R. No. 225789, July 29, 2019.

<sup>9</sup> See *Tumabini v. People*, G.R. No. 224495, February 19, 2020.

Here, Police Office 2 Lester Delubio (PO2 Delubio) immediately marked the ten (10) heat-sealed transparent plastic sachets of suspected *shabu* with “EVI-B1” to “EVI-B10”, the smaller heat-sealed transparent plastic with “EVI”, the disposable lighter with “EVI-1” and “EVI-2”, the aluminum foil with “EVI-A”, the four (4) Jollibee tissue papers with “EVI-D”, the improvised tooter with “EVI-C”, and the Nokia cellphone with “EVI-E” at Oliver Balandra’s (Balandra) apartment where the search warrant was served.<sup>10</sup> The marking was also done in the presence of petitioner, barangay captain Robert Mercado, *barangay kagawad* Joselito Lopez, media representatives Rex Canesarez and Jojo Jaranilla, and DOJ representative Julius Dela Rosa.<sup>11</sup>

Thereafter, Police Officer 3 Carlos Alob (PO3 Alob) prepared the Proper Conduct of Search Form, Receipt of Property Seized Form, and had taken pictures as proof of inventory and photography of the confiscated items.

The *second link* in the chain of custody is the transfer of the seized drugs by the apprehending officer to the investigating officer. The investigating officer shall conduct the proper investigation and prepare the necessary documents for the proper transfer of the evidence to the police crime laboratory for testing. Thus, the investigating officer’s possession of the seized drugs must be documented and established.<sup>12</sup>

The rule on chain of custody includes testimony about every link in the chain, from the moment the item was picked up to the time it is offered in evidence, in such a way that every person who touched the exhibit would describe how and from whom it was received, where it was and what happened to it while in the witness’ possession, the condition in which it was received and the condition in which it was delivered to the next link in the chain. These witnesses would then describe the precautions taken to ensure that there had been no change in the condition of the item and no opportunity for someone not in the chain to have possession of the same. It is from the testimony of every witness, who handled the evidence from which a reliable assurance can be derived, that the evidence presented in court is one and the same as that seized from the accused.<sup>13</sup>

Here, though the *corpus delicti* was not turned over to an investigating officer, PO2 Delubio was able to account for the condition of the confiscated drug and drug paraphernalia since he held on to them, from the time he recovered them from petitioner on August 15, 2013, while the same were being inventoried and pictured, and thereafter, turned over to the crime laboratory. His testimony states thus:

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<sup>10</sup> See TSN, January 20, 2015, pp. 7-11.

<sup>11</sup> See TSN, May 13, 2014, p. 11.

<sup>12</sup> See *People v. Del Rosario*, G.R. No. 235658, June 22, 2020.

<sup>13</sup> See *People v. Martin*, G.R. No. 233750, June 10, 2019.

Q: So, after these items were recovered from the crime scene, marked and photographed, what did you do with the items if you did anything?

A: We went to the Crime Laboratory in Bacolod City together with the items, the *shabu*. With me is PSI Darroca, SPO1 Eraula, myself, and the suspect, Ma'am.

Q: So, from the crime scene to the Police Station?

A: Yes, Ma'am.

Q: Who was in custody of the items seized from the accused?

A: **It's with me, Ma'am.**

Q: So, you were the one?

A: **Yes, Ma'am.**

Q: So, you went to the Police Station to have the incident recorded?

A: Yes, Ma'am.

Q: So, you have the Police Blotter Report on that?

A: Yes, Ma'am.<sup>14</sup>

Indeed, the absence of the investigating officer, *per se*, does not affect the integrity and evidentiary value of the *corpus delicti* so long as the transfer of custody is accounted for.

The **third link** is the delivery by the investigating officer of the seized items to the forensic chemist. Once the seized drugs arrive at the forensic laboratory, it will be the laboratory technician who will test and verify the nature of the substance. Additionally, the **fourth link** involves the submission of the seized drugs by the forensic chemist to the court when presented as evidence in the criminal case.<sup>15</sup>

Both links were duly established in this case. PO2 Delubio testified that he turned over the seized items to the Philippine National Police (PNP) Crime Laboratory – Office 6 in Camp Alfredo Montelibano, Bacolod City, Negros Occidental for laboratory examination and drug testing.<sup>16</sup> Thereafter, Police Chief Inspector Paul Jerome Puentespina (P/CInsp. Puentespina) examined the eleven (11) plastic sachets containing white crystalline substance and one (1) strip aluminum foil with possible traces of *shabu* which later on yielded positive result for *methamphetamine hydrochloride* or *shabu*.<sup>17</sup>

While PO2 Delubio did not testify on who received the confiscated items in the crime laboratory, the same did not diminish the integrity and evidentiary value of the seized drug. To be sure, the Court is not inflexible in its treatment of drug cases. In fact, the Court is well aware that a perfect chain of custody is almost always impossible to achieve and so it has previously ruled that minor lapses or deviations from the prescribed procedure are excused so long as it can be shown by the prosecution that the arresting

<sup>14</sup> TSN, January 20, 2015, pp. 12-13.

<sup>15</sup> See *People v. Bangcola*, G.R. No. 237802, March 18, 2019.

<sup>16</sup> TSN, January 20, 2015, p. 13.

<sup>17</sup> TSN, July 15, 2014, pp. 5-8.

officers put in their best effort to comply with the same and the justifiable ground for non-compliance is proven as a fact.<sup>18</sup>

Lastly, P/CInsp. Puentespina vividly testified how he preserved the specimens. He marked the eleven (11) plastic sachets and one (1) strip aluminum foil with D-203-2013 A to L. Then, he enclosed the items in a big plastic sachet, marked D-203-2013 A-L on top of it, and wrote the date August 16, 2013 and his initials "PJP." On the other side of the big plastic sachet, he wrote "2.008 positive 1 for traces" and he signed on the edge of the tape.<sup>19</sup> Thereafter, he turned over the items to evidence custodian PO3 Ariel Magbanua of the crime laboratory for safekeeping.<sup>20</sup> On July 15, 2014, he retrieved the items and brought them for presentation to the court.<sup>21</sup>

Indeed, in *People v. De la Trinidad*,<sup>22</sup> the Court held that the integrity of the evidence is presumed to have been preserved unless there is a showing of bad faith, ill will, or proof that the evidence has been tampered with. Petitioner bears the burden of showing that the evidence was tampered or meddled with in order to overcome the presumption of regularity in the handling of exhibits by public officers and the presumption that public officers properly discharged their duties.<sup>23</sup> Here, petitioner had miserably failed to present any evidence that would justify a finding that the apprehending team had ill motive in tampering with the evidence in order to hold him liable for these grave offenses.

All told, the Court of Appeals did not commit reversible error when it affirmed the verdict of conviction for violations of Sections 11 and 12, Article II of RA 9165.

### ***Penalty***

Pursuant to Section 11, Article II of RA 9165, the penalty for illegal possession of *shabu* weighing less than five (5) grams is imprisonment ranging from twelve (12) years and one (1) day to twenty (20) years and a fine ranging from ₱300,000.00 to ₱400,000.00.<sup>24</sup> Here, petitioner was found in

<sup>18</sup> See *Tolentino v. People*, G.R. No. 227217, February 12, 2020.

<sup>19</sup> TSN, July 15, 2014, p. 7.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.* at 11.

<sup>22</sup> 742 Phil. 347, 360 (2014).

<sup>23</sup> *Id.*

<sup>24</sup> SECTION 11. *Possession of Dangerous Drugs.* – x x x

Otherwise, if the quantity involved is less than the foregoing quantities, the penalties shall be graduated as follows:

x x x (3) Imprisonment of twelve (12) years and one (1) day to twenty (20) years and a fine ranging from Three hundred thousand pesos (₱300,000.00) to Four hundred thousand pesos (₱400,000.00), if the quantities of dangerous drugs are less than five (5) grams of opium, morphine, heroin, cocaine or cocaine hydrochloride, marijuana resin or marijuana resin oil, methamphetamine hydrochloride or "*shabu*," or other dangerous drugs such as, but not limited to, MDMA or "ecstasy," PMA, TMA, LSD, GHB, and those similarly designed or newly introduced drugs and their derivatives, without having any therapeutic value or if the quantity possessed is far beyond therapeutic requirements; or less than three hundred (300) grams of marijuana. (*Comprehensive Dangerous Drugs Act of 2002, Republic Act No. 9165, June 7, 2002*)

possession of *shabu* with an aggregate weight of 2.008 grams. Thus, we sustain the imposed penalty of twelve (12) years and one (1) day as minimum to fifteen (15) years as maximum imprisonment, and a fine of ₱350,000.00 in Criminal Case No. RTC-5151.

On the other hand, under Section 12, Article II of RA 9165, the penalty for illegal possession of drug paraphernalia ranges from six (6) months and one (1) day to four (4) years and a fine ranging from ₱10,000.00 to ₱50,000.00.<sup>25</sup> Hence, we also sustain the imposed penalty of six (6) months and one (1) day as minimum to two (2) years as maximum imprisonment and a fine of ₱20,000.00<sup>26</sup> in Criminal Case No. RTC-5152.

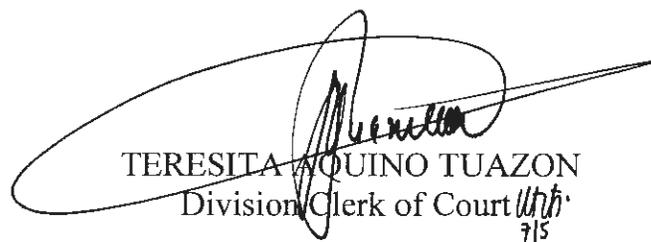
**WHEREFORE**, the petition is **DENIED**. The October 25, 2018 Decision and October 28, 2019 Resolution of the Court of Appeals in CA-G.R. CR No. 03008 are **AFFIRMED**.

1. In Criminal Case No. RTC-5151, petitioner Edgar Inocencio y Viterbo is found **GUILTY** of violation of Section 11, Article II of Republic Act No. 9165 and is sentenced to an imprisonment term of twelve (12) years and one (1) day, as minimum, to fifteen (15) years, as maximum. He is also ordered to **PAY** a fine of **₱350,000.00**; and

2. In Criminal Case No. RTC-5152, petitioner Edgar Inocencio y Viterbo is found **GUILTY** of violation of Section 12, Article II of Republic Act No. 9165 and is sentenced to an imprisonment term of six (6) months and one (1) day, as minimum, to two (2) years, as maximum. He is also ordered to **PAY** a fine of **₱20,000.00**

**SO ORDERED.**" (J. Lopez, J., designated additional member per Special Order No. 2822 dated April 7, 2021.)

By authority of the Court:

  
TERESITA AQUINO TUAZON  
Division Clerk of Court *Urh*  
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06 JUN 2021

<sup>25</sup> SECTION 12. *Possession of Equipment, Instrument, Apparatus and Other Paraphernalia for Dangerous Drugs.* — The penalty of imprisonment ranging from six (6) months and one (1) day to four (4) years and a fine ranging from Ten thousand pesos (P10,000.00) to Fifty thousand pesos (P50,000.00) shall be imposed upon any person, who, unless authorized by law, shall possess or have under his/her control any equipment, instrument, apparatus and other paraphernalia fit or intended for smoking, consuming, administering, injecting, ingesting, or introducing any dangerous drug into the body: *Provided*, That in the case of medical practitioners and various professionals who are required to carry such equipment, instrument, apparatus and other paraphernalia in the practice of their profession, the Board shall prescribe the necessary implementing guidelines thereof. (*Comprehensive Dangerous Drugs Act of 2002, Republic Act No. 9165, June 7, 2002*).

<sup>26</sup> See *People v. Santos*, 823 Phil. 1162 (2018); see also *rollo*, p. 21.

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THE DIRECTOR (reg)  
Bureau of Corrections  
1770 Muntinlupa City

HON. PRESIDING JUDGE (reg)  
Regional Trial Court, Branch 59  
San Carlos City, Negros Occidental  
(Crim. Case No. RTC-5151 & 5152)

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