



REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated **June 20, 2022** which reads as follows:*

“G.R. No. 249891 (*Espiridion¹ Q. Braganza v. People of the Philippines*). — This Court resolves a Petition for Review on *Certiorari*² under Rule 45 of the Rules of Court, assailing the Decision³ dated May 31, 2019 of the Court of Appeals (CA) in CA-G.R. CR No. 41271. The CA affirmed the Joint Decision⁴ dated November 2, 2017 of the Regional Trial Court, Branch 20, Vigan City, Ilocos Sur (RTC), convicting petitioner Espiridion Q. Braganza (*Braganza*) for violation of Sections 11 and 15, Article II of Republic Act No. 9165⁵ (*R.A. No. 9165*).

Antecedents

On August 27, 2015, two Informations were filed against Braganza, the accusatory portion of each Information reads as follows:

Criminal Case No. 7713-V-2015

That on or about the 26th day of August 2015, in the city of Vigan, Province of Ilocos Sur, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without having been duly authorized by law, with intent to possess, did then and there knowingly, willfully, unlawfully and feloniously have in his possession, control and custody one (1) plastic film container containing 0.0159 gram, more or less, of Methamphetamine Hydrochloride otherwise known as “SHABU”, a dangerous drug and one (1) transparent glass vial containing *Shabu* residue.

Contrary to law.⁶

¹ Also referred as “Esperidion” in some parts of the *rollo*.

² *Rollo*, pp. 96-115.

³ Penned by Associate Justice Ramon R. Garcia, with Associate Justices Eduardo B. Peralta, Jr. and Gabriel T. Robeniol, concurring; *id.* at 52-70.

⁴ *Id.* at 30-48.

⁵ Comprehensive Dangerous Drugs Act of 2002.

⁶ Records, p. 1.

Criminal Case No. 7714-V-2015

That on or about the 26th day of August 2015, in the City of Vigan, Province of Ilocos Sur, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without having been duly authorized by law, with intent to possess, did then and there knowingly, willfully, unlawfully and feloniously USE/CONSUME Methamphetamine Hydrochloride otherwise known as “SHABU,” a dangerous drug.

Contrary to law.⁷

On October 1, 2015, Braganza was arraigned and pleaded not guilty to the crimes he was charged with.⁸ After pretrial,⁹ trial on the merits ensued.

The prosecution alleged that on August 26, 2015, Police Superintendent Jugith J. Del Prado, Chief of Police of the Philippine National Police Regional Office I, Vigan City Police Station, formed an operations team composed of Senior Police Officer 4 Gilbert A. Tolosa (*SPO4 Tolosa*), Police Officer 2 Bryan Romeo Lopez (*PO2 Lopez*), Senior Police Officer 2 Leonardo F. Real (*SPO2 Real*), Senior Police Officer 2 Elmer A. Asitin, Senior Police Officer 2 Ramil A. Racoma (*SPO2 Racoma*). The Ilocos Sur Criminal Investigation and Detection Group (*CIDG*), the Philippine Drug Enforcement Agency (*PDEA*), and the Police Provincial Office Provincial Anti-Illegal Drugs Special Operation Task Group of Ilocos Sur worked with the team to implement the search warrant¹⁰ issued by Judge Francisco A. Ante, Jr. (*Judge Ante*) of the Municipal Trial Court in Cities, Vigan City, Ilocos Sur (*MTCC*) against Braganza.¹¹ During the briefing, SPO4 Tolosa and PO2 Lopez were designated as the searchers, while SPO2 Real was assigned as the photographer.¹² Considering that their police station was short on police officers experienced in implementing search warrants, PO2 Lopez was also appointed as duty investigator simultaneous with his assignment as searcher.¹³ After the briefing, the team, along with Glenn Tulas (*Tulas*), a representative of the Office of Provincial Prosecutor of the Department of Justice, proceeded to the residence of Braganza at Cabaroan Daya, Vigan City, Ilocos Sur.¹⁴

When the operations team arrived at Braganza’s house at around 10:20 a.m., SPO4 Tolosa showed the search warrant to Braganza, who was accompanied by a relative and explained to him its purpose. Braganza affixed his signature on the search warrant and allowed the operations team inside his residence. Upon arrival of Barangay Councilors George Arconado

⁷ *Rollo*, p. 31.

⁸ *Records*, p. 29.

⁹ *Id.* at 43-46.

¹⁰ Search Warrant No. 11, S’2015 dated August 20, 2015; *Records*, p. 8.

¹¹ *Records*, p. 5; TSN, October 26, 2016, p. 4.

¹² TSN, June 8, 2016, pp. 3-4; TSN, October 26, 2016, p. 4.

¹³ TSN, June 8, 2016, pp. 2, 14-15.

¹⁴ TSN, June 8, 2016, p. 3; *Records*, p. 72.

(Arconado), Herno Pila (*Pila*) and Eliseo Allagadan,¹⁵ the search immediately started.¹⁶

In the course of the search inside Braganza's room on the second floor of Braganza's residence, PO2 Lopez found on the second layer of the wooden cabinet items, which he immediately marked with his initials and the date of the search, *viz.*: (a) one small medicine bottle with *shabu* residue marked as BRAL 08-26-15 "A"; (b) one plastic film container with alleged *shabu* residue marked as BRAL 08-26-15 "B"; (c) 32 pieces of 2x3 plastic sachets marked as BRAL 08-26-15 "C"; (d) one-piece 3x5 transparent plastic sachet marked as BRAL 08-26-15 "D"; and (e) one improvised stick with two needles on its tip marked as BRAL 08-26-15 "E". After the search concluded, SPO4 Tolosa inventoried the items seized at the ground floor of the house.¹⁷

Braganza, Arconado, Pila, and Tulas were present all throughout the search, marking, and inventory.¹⁸ They also signed the Receipt of Properties/Items/Articles Seized¹⁹ (*Inventory Receipt*) and the Certificate in the Conduct of Orderly Search.²⁰ SPO2 Real took photos of the entire operation from start to finish.²¹

Thereafter, PO2 Lopez, SPO4 Tolosa, SPO2 Racoma, and Braganza proceeded to the MTCC for the return of the search warrant while the rest of the team went back to the police station.²²

When they arrived at the office of Judge Ante, PO2 Lopez immediately presented the items seized to the judge by placing them on top of his table; and the latter's secretary then listed down the said items. Thereafter, PO2 Lopez requested that the Vigan City Police Station be allowed to retain in its custody the items seized from Braganza, which was granted in an Order²³ dated August 26, 2015. After that, they went to the health center where Braganza underwent a medical examination. Then they proceeded to Vigan Police Station where the necessary documentations were prepared, including the police officer's joint affidavit,²⁴ along with the letter-requests for laboratory examination of the items seized and drug test of Braganza.²⁵

¹⁵ Records, pp. 8, 10.

¹⁶ TSN, June 8, 2016, pp. 3-4; TSN, October 26, 2016, pp. 4-6.

¹⁷ TSN, June 8, 2016, pp. 4-6, 16-17; Records, p. 72.

¹⁸ TSN, June 8, 2016, pp. 4-8.

¹⁹ Records, p. 72.

²⁰ *Id.* at 73.

²¹ *Id.* at 76-80.

²² TSN, June 8, 2016, p. 8; TSN, October 26, 2016, p. 9.

²³ Records, p. 82.

²⁴ *Id.* at 69-70.

²⁵ TSN, June 8, 2016, pp. 19-20, 22; TSN, October 26, 2016, pp. 9-10; Records, p. 81.

Armed with Request for Laboratory Examination²⁶ and Request for Drug Test Examination,²⁷ PO2 Lopez brought the accused, together with the seized small medicine bottle and plastic film container, to the forensic laboratory for testing. Police Officer 3 Lerwin G. Quitevis (*PO3 Quitevis*), evidence custodian of the Ilocos Sur Crime Laboratory, received the said items.²⁸ PO3 Quitevis thereafter turned over all specimens he received, as well as the urine sample he collected from Braganza, to Forensic Chemist PSI Roanalaine B. Baligod (*PSI Baligod*) for the conduct of the forensic examinations.

PCI Baligod subjected the specimens to qualitative analyses, and reduced her findings in the following chemistry reports:

CHEMISTRY REPORT NO. D-151-2015-IS²⁹

x x x x

SPECIMEN SUBMITTED:

A – One (1) transparent glass vial with markings BRAL A and date containing white crystalline residue

B – One (1) plastic film container with markings BRAL C and date containing 0.0159 gram of white crystalline substance

xxx xxx xxx

x x x x

FINDINGS:

Qualitative examination conducted on above stated specimens gave POSITIVE result to the test for the presence of Methamphetamine hydrochloride, a dangerous drug.

xxx xxx xxx

CONCLUSION:

Specimen A contains Methamphetamine, a dangerous drug.

xxx xxx xxx

CHEMISTRY REPORT NO. DT-072-2015-IS³⁰

x x x x

SPECIMEN SUBMITTED:

A – Urine sample taken from the living person of Espiridion Braganza y Quitariano

xxx xxx xxx

x x x x

²⁶ Records, p. 38.
²⁷ *Id.* at 39.
²⁸ *Id.* at 38-40.
²⁹ *Id.* at 41.
³⁰ *Id.* at 42.

FINDINGS:

Screening and Confirmatory tests conducted on the above-stated specimen gave POSITIVE result to the test for the presence of Methamphetamine, a dangerous drug and NEGATIVE for THC-metabolites, also a dangerous drug

xxx

xxx

xxx

CONCLUSION:

Specimen A contain Methamphetamine, a dangerous drug.

xxx

xxx

xxx

After PCI Baligod examined the specimens, she turned them over to PO3 Quitevis for safekeeping.³¹

For his defense, Braganza denied the charges and claimed that the pieces of evidence presented against him were all planted.

He narrated that at around 10 p.m. of August 26, 2015, he was in his house sleeping when someone knocked at his door. Without warning, several individuals who introduced themselves as PDEA agents entered his room. A police officer showed him a search warrant and started searching for illegal drugs. The search was suspended when he demanded that the search be witnessed by barangay officials. When the PDEA agents searched his room in the presence of Barangay Captain Edwin Arcena, Pila, and Arconado, no drug was found. Braganza insisted that what the PDEA agents found were an empty bottle of merthiolate, an empty film container, sachets used for storing threads for his tailoring shop, and a threading needle. He was astounded when the police officers informed him that traces of *shabu* were found inside the bottle of merthiolate and the plastic film container. He was also shocked when he tested positive for methamphetamine. He contended that the positive result could have been due to his use of steroid without doctor's prescription, or that his urine sample was switched with that of another person.³²

On November 2, 2017, the RTC rendered a Joint Decision,³³ finding Braganza guilty of all the charges, the dispositive portion of which reads:

WHEREFORE, in view of the foregoing premises, the court finds the accused **ESPIRIDION BRAGANZA y QUITORIANO** as follows:

Criminal Case No. 7713-V-2015

GUILTY beyond reasonable doubt of the crime of violation of Section 11, Article II of R.A. 9165. Accordingly, he is hereby sentenced to suffer the indeterminate penalty of **TWELVE (12) YEARS and ONE (1) DAY** as minimum to **FOURTEEN (14)** as maximum, without subsidiary

³¹ TSN, August 3, 2016, p. 4.

³² TSN, October 11, 2017, pp. 2-10.

³³ *Id.* at 116-133.

penalty in case of insolvency, and to pay a fine of Three Hundred Thousand Pesos (P300,000.00).

Criminal Case No. 7714-V-2015

GUILTY beyond reasonable doubt of the offense charged in the Information, and is hereby sentenced to SIX (6) months rehabilitation.

The methamphetamine Hydrochloride (*shabu*) object evidence of Criminal Case No. 7714-V-2015 indicated in the Information and offered in evidence are hereby forfeited in favor of the Government. The Branch Clerk of Court is ordered to immediately notify PDEA, Ilocos Sur Office to come and receive the said items.

Also, the Branch Clerk of Court is hereby directed to issue the MITTIMUS upon finality of this Decision.

Pursuant to OCA CIR. No. 85-2017, furnish copy of this Decision to the National Bureau of Investigation in Manila.

SO ORDERED.³⁴

The RTC held that the prosecution was able to establish all the elements necessary to convict Braganza for illegal possession of dangerous drugs. It gave credence to the testimony of prosecution witnesses and was not swayed by Braganza's bare denial as well as his insinuation of evidence planting because he failed to present any proof of ill motive or ill will between him and the police officers.

The trial court did not find material the variance in the description of the contents found in the plastic film container and medicine bottle considering that both containers tested positive for *shabu*. It also found that the chain of custody requirements under the law had been observed and the identity and integrity of the illegal drugs duly preserved.³⁵

The RTC also found Braganza guilty for use of dangerous drugs. It held that the fact that his urine sample tested positive for *shabu* when it was subjected to laboratory examination following his arrest for a drug related crime is conclusive evidence that he violated Section 15 of R.A. No. 9165.³⁶

Braganza moved for reconsideration. In an Order³⁷ dated December 27, 2017, the RTC found no compelling reason to overturn its decision finding Braganza guilty of illegal possession of dangerous drugs. However, it ordered the dismissal of the charge for use of dangerous drugs for the reason that the same is absorbed under Section 11 of R.A. No. 9165. The *fallo* of the said Order reads:

³⁴ *Id.* at 47-48.

³⁵ *Id.* at 44-47.

³⁶ *Id.* at 47.

³⁷ Records, pp. 49-50A.

WHEREFORE, the Motion for Reconsideration as to Criminal Case No. 7713-V is **DENIED**, and the Decision **STANDS**, but the finding in Criminal Case No. 7714-V is hereby **LIFTED** and **SET ASIDE**. Thereby, the said case is ordered **DISMISSED**.

SO ORDERED.³⁸

Braganza filed an appeal before the CA questioning his conviction.

In a Decision³⁹ dated May 31, 2019, the CA affirmed the Joint Decision of the RTC for the following reasons: (a) It found the intelligible, candid, and unwavering the testimonies of PO2 Lopez, SPO3 Tolosa, and SPO2 Real that a plastic film container containing *shabu* and medicine bottle containing *shabu* residue were recovered from Braganza's wooden cabinet credible and worthy of belief by reason of lack of evidence of ill motive on part of the police officers to falsely testify against him; (b) The prosecution was able to establish an unbroken chain in the custody of the items seized from the time they were confiscated up to the time they were offered in court as evidence; (c) It found incredible Braganza's claim that the contents of the plastic film container was switch. The size of the granules, coupled with the fact that only a small amount of *shabu* was found inside the plastic film container explain why the police officers noted in the Inventory Receipt that the film container contained only residue of *shabu* when it actually contained *shabu* weighing 0.0159 grams as confirmed by PCI Baligod; (d) Prior coordination with PDEA had been sufficiently shown contrary to the contention of Braganza. In any event, prior coordination with PDEA of police operations in connection with dangerous drugs is not indispensable; (e) There was no violation of the Revised PNP Manual on Anti-Illegal Drugs Operations and Investigation (*PNP Manual*) when the items seized were not turned over by the searcher to the investigator as no such turnover was mandated by the said PNP manual; (f) The allegation of switching is not proved by the failure of the prosecution to present close-up pictures of the plastic film container and the medicine bottle seized as the determination of which evidence to present is within the exclusive prerogative of the prosecution which the court cannot interfere with; (g) Braganza's self-serving, unconvincing, and uncorroborated defense of denial and frame-up does not deserve credence.⁴⁰

The CA likewise found Braganza guilty for use of dangerous drugs under Section 15 of R.A. No. 9165 on the ground that he was arrested for an act punishable under R.A. No. 9165 and he tested positive for *shabu* when subjected to drug test. The CA also found that the penalties imposed upon Braganza for violations of Sections 11 and 15 of R.A. No. 9165 consistent

³⁸ *Id.* at 50A.

³⁹ Penned by Associate Justice Ramon R. Garcia, with Associate Justices Eduardo B. Peralta, Jr. and Gabriel T. Robeniol, concurring; *id.* at 73-91.

⁴⁰ *Id.* at 64-69.

with the law; hence, it affirmed the same.⁴¹ The CA disposed of the case in this wise:

WHEREFORE, premises considered, the appeal is hereby **DENIED**. The Joint Decision dated November 2, 2017 of the Regional Trial Court, Branch 20, Vigan City, Ilocos Sur is **AFFIRMED**.

SO ORDERED.⁴²

Hence, this petition.

Issue

The issue presented for this Court's resolution is whether the CA gravely erred in holding that Braganza's guilt for violation of Sections 11 and 15 of R.A. No. 9165 had been proven beyond reasonable doubt.

Petitioner argues that the CA gravely erred in convicting him for the crime of use of dangerous drugs since the dismissal by the trial court of the said charge against him already amounts to his acquittal. As such, the CA could no longer convict him on appeal.⁴³

As for the charge against him for illegal possession of dangerous drugs, petitioner contends that the prosecution failed to prove his guilt beyond a shadow of doubt. He again questions the lack of prior coordination with the PDEA before the search warrant was implemented. He argues that even if prior coordination is not necessary at all times, the absence thereof should have at least been explained.⁴⁴

He also claims that the chain of custody requirements under Section 21 of R.A. No. 9165 had been breached as shown by the following circumstances: (a) There is no showing that the seized items were marked in the presence of the accused as the pictures that were offered in evidence only depicted the seizing officer marking the items seized alone or in the presence of the witnesses only; (b) The marking was not witnessed by a representative of the media; (c) The failure of the seizing officer to turn over the items seized to the duty investigator as mandated by the PNP Manual placed the integrity and evidentiary value of the items seized in serious doubt since such failure opens up the possibility that the seized items were altered or swapped for another; (d) The change in the description of the contents of the film container and medicine bottle from *shabu* residue in the Inventory Receipt, to white crystalline substance/residue in the affidavit of arrest and request for

⁴¹ *Id.* at 69.

⁴² *Id.* at 70.

⁴³ *Id.* at 42.

⁴⁴ *Id.* at 16-17.

laboratory examination creates a nagging suspicion of alteration or substitution of the items seized since the police officers ought to know the distinction between *shabu* residue that does not contain granules, and white crystalline substance that contains granules; (e) Pictures of the medicine bottle and plastic film container, instead of close-up pictures of the contents thereof, were the ones offered in evidence. Their nonpresentation corroborated the suspicion of change or alteration of the seized items; (f) The chain of custody receipt shows that the items seized never passed through the hands of SPO4 Tolosa, yet the prosecution claims that PO2 Lopez transferred the same to him for the preparation of the inventory. It was not shown how and when the items seized were transferred by PO2 Lopez to SPO4 Tolosa for inventory, and then transferred back to PO2 Lopez after the said inventory; (g) PO2 Lopez failed to identify the MTCC employee to whom he surrendered the seized items when he returned the search warrant. No evidence was also presented that the seized items were received by an employee of MTCC and that said employee transferred the seized items backed to PO2 Lopez.⁴⁵

Petitioner further argues that given the irregularities and procedural lapses that attended the handling of the seized items, it was wrong for the trial court to have merely relied on the presumption that the police officers performed their official functions regularly to make their testimonies worthy of belief.⁴⁶

In its Comment, the Office of the Solicitor General contends that the CA placed petitioner in double jeopardy when it found him liable for use of dangerous drugs despite the December 27, 2017 Order of the RTC dismissing the said charge against him. As such, petitioner should not have been punished again for the same offense.⁴⁷

As for the charge for illegal possession of dangerous drugs, respondent contends that the same must fail as it poses questions of fact, and not of law, as required by the Rules of Court. Even if the Court were to weigh the evidence presented all over again, respondent asserts that the guilt of petitioner for the said crime had been established beyond reasonable doubt given that the illegal substances inside the plastic film container and medicine bottle were found during the implementation of a valid search warrant. The police officers were also able to preserve the integrity and the evidentiary value of the seized illegal substances from the moment of their seizure until their presentation in court. Furthermore, the absence of evidence manifesting ill motive on the part of the witnesses for the prosecution lends credence to their testimonies that petitioner indeed committed the crime charged and provided sufficient justification for the application of the presumption that they performed their duties in a regular manner.⁴⁸

⁴⁵ *Id.* at 17-18, 22, 24-26.

⁴⁶ *Id.* at 23-25.

⁴⁷ *Id.* at 125-127.

⁴⁸ *Id.* at 128-129.

Our Ruling

The petition has merit.

The CA erred in convicting the petitioner for illegal use of dangerous drugs since double jeopardy has already set in.

The rule against double jeopardy is enshrined in Section 21, Article III of the 1987 Constitution. It provides:

Section 21. No person shall be twice put in jeopardy of punishment for the same offense. If an act is punished by a law and an ordinance, conviction or acquittal under either shall constitute a bar to another prosecution for the same act.

Section 7, Rule 117 of the 1985 and 2000 Rules on Criminal Procedure strictly adhere to the constitutional proscription against double jeopardy and provide for the requisites for double jeopardy to attach.⁴⁹ Echoing the requisites provided by the said Rules, this Court in *David v. Marquez*⁵⁰ held:

Also, it is elementary that double jeopardy attaches only when the following elements concur: (1) the accused is charged under a complaint or information sufficient in form and substance to sustain their conviction; (2) the court has jurisdiction; (3) the accused has been arraigned and has pleaded; and (4) [they are] convicted or acquitted, or the case is dismissed without [their] consent.⁵¹

These elements are present here.

First, the Information filed in Criminal Case No. 7714-V-2015 was sufficient in form and substance to sustain a conviction as in fact petitioner was initially convicted by the trial court for use of dangerous drugs.

Second, the RTC had jurisdiction over the said criminal case since under R.A. No. 9165, jurisdiction over drug-related cases is exclusively vested with the RTC and no other.⁵²

Third, petitioner was arraigned and entered a plea of not guilty.

⁴⁹ *Cerezo v. People*, 665 Phil. 365 (2011).

⁵⁰ 810 Phil. 187 (2017).

⁵¹ *Id.*

⁵² *De Lima v. Guerrero*, 819 Phil. 616 (2017)

Fourth, the RTC reconsidered its decision and dismissed Criminal Case No. 7714-V-2015 on the ground that petitioner cannot be separately charged for illegal possession of dangerous drugs under Section 11 of R.A. No. 9165 and use of dangerous drugs under Section 15 of the same law since it is clear from Section 15 that the provisions of Section 11 shall apply since petitioner was also found to have in his possession such quantity of drugs provided under Section 11 of the said law.

From the foregoing, it is clear that when the CA overturned the dismissal of the charge against the petitioner for use of dangerous drugs, it transgressed the constitutional proscription not to put any person twice in jeopardy of punishment for the same offense.⁵³

Moreover, the RTC did not err when it dismissed the charge for use of dangerous drugs since it is absorbed by illegal possession of dangerous drugs. The ruling in *People v. Galicia*⁵⁴ is instructive:

It is clear from the above that the Section 15 does not apply when a person charged with violation of Section 15, Article II, RA 9165 on use of dangerous drugs, is also found to have possession of such quantity of drugs provided under Section 11 of the same law. This means that appellant may not be charged separately of violation of Section 11 on illegal possession of dangerous drugs and of Section 15 on use of dangerous drugs since it is clear from the above that the provisions of Section 11 shall apply. Illegal possession of dangerous drugs absorbs the use of dangerous drugs. x x x⁵⁵

As for the charge of illegal possession of dangerous drugs under Section 11 of R.A. No. 9165, the following elements must be shown to exist to secure a conviction for the said crime: (a) the accused was in possession of an item or object identified to be a prohibited or regulated drug; (b) such possession is not authorized by law; (c) the accused freely and consciously possessed the drug.⁵⁶

To establish the first element of the crime, it is imperative that the identity of the prohibited drug be established with moral certainty, considering that the dangerous drug itself forms an integral part of the *corpus delicti* of the crime.⁵⁷ To remove any unnecessary doubt on the identity of the dangerous drugs, the prosecution must demonstrate an unbroken chain of custody over the same and account for each link in the chain of custody from the moment the drugs are seized up to their presentation in court as evidence of the crime.⁵⁸

⁵³ *Tiu v. Court of Appeals*, 604 Phil. 48, 57 (2009).

⁵⁴ 826 Phil. 119 (2018).

⁵⁵ *Id.* at 136.

⁵⁶ *People v. Morales*, 630 Phil. 215 (2010). (Citation omitted).

⁵⁷ *People v. Gamboa*, 833 Phil. 1055, 1066 (2018).

⁵⁸ *People v. Cabrellos*, 837 Phil. 428, 438 (2018).

The chain of custody is divided into four links: *first*, the seizure and marking, if practicable, 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.⁵⁹

The first link refers to the marking, inventory, and photograph of the seized items.⁶⁰ Section 21(1) of R.A. No. 9165 lays down the procedure for the first link in the chain of custody. It describes in detail the steps to be taken by the apprehending team having initial custody and control of the drugs.⁶¹

This section, however, has been amended by R.A. No. 10640⁶² which took effect on August 7, 2014⁶³ and modified the number of witnesses required during the conduct of the inventory. As amended, the witnesses required are: an elected public official, **and** a representative of the National Prosecution Service **or** the media.⁶⁴ Since the crimes subject of this case were committed on August 26, 2015, the amended version of Section 21 governs:

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 person/s from whom such items were confiscated and/or seized, or [their] 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

⁵⁹ *People v. Rivera*, G.R. No. 252886, March 15, 2021. (Citation omitted).

⁶⁰ *Barayuga v. People*, G.R. No. 248382, July 28, 2020.

⁶¹ *People v. Asjali*, G.R. No. 216430, September 3, 2018, 878 SCRA 514, 526.

⁶² 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.

⁶³ *People v. De Dios*, G.R. No. 243664, January 22, 2020.

⁶⁴ *People v. Gutierrez*, G.R. No. 236304, November 5, 2018, 884 SCRA 276, 286. (Citation omitted).

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[.]

Here, there is no question that the drugs seized were marked and inventoried. In fact, the marking and inventory were done at the place where such items were seized, and witnessed by elective public officials, namely Arconado and Pila, and a representative of the Office of the Provincial Prosecutor in the person of Tulas, the required witnesses at the time of the commission of the crime pursuant to Section 21, Article II of R.A. No. 9165, as amended by R.A. No. 10640.

However, the required photographs taken of the seized items leaves much to be desired. It is clear from Section 21 that what must be photographed are the drugs seized, and not just the receptacles that contain them, like what happened in this case.⁶⁵

The reason for this requirement is obvious. The pictures provide proof of the physical appearance of the drugs seized as an added safeguard against switching or planting. Without the photographs that would have immortalized how the drugs allegedly seized looked like to the naked eye, doubts on the identity of the drugs seized will continue to persist. The required photographs gain more importance in light of the contention of the petitioner of evidence switching given that in the inventory receipt, the contents of the plastic film container and medicine bottle were described to be mere *residue*; but such description was changed to "white crystalline substance/residue" when the police officers executed their joint affidavit and the request for laboratory examination was prepared.

For the petitioner, the terms could not be used interchangeably since residue means powder form; while white crystalline substance means granules were found. Doubts on whether the contents of the plastic film container and medicine bottle seized were the same ones examined by the forensic chemist and presented in court could have been easily dispelled by the presentation of the photographs thereof which are actually available. The testimony of PO2 Real is on point:

Q One of the issues raised in these cases was whether or not the plastic container contained white crystalline substance, why did you not make it closer picture of the items after the implementation of search warrant?

A I took so many pictures but the personnel chose, sir.

⁶⁵ Records, p. 79.

Q Meaning to say you took closer pictures on those seized items and they were not included and presented to this Honorable Court.

A They selected, sir. I was not the one who chose.

COURT:

Q What device did you use?

A Canon camera, your Honor.

Q Which you can adjust.

A Yes, your Honor.⁶⁶

The nonpresentation of the photographs of the drugs found inside the plastic film container and the medicine bottle despite their availability creates reasonable doubt on the identity of the drugs seized and bolsters the claim of the petitioner that the contents of these containers were altered or switched.

The subsequent handling of the drugs also shows gaps in the chain of custody thereby raising doubts on their integrity and evidentiary value. It must be emphasized that the chain of custody requires that law enforcers or any person who came in possession of the seized drugs must observe the procedure for proper handling of the seized substance to remove any doubt that it was changed, altered, modified, or planted before its presentation in court as evidence. The chain of evidence is constructed by proper exhibit handling, storage, labeling, and recording, and must exist from the time the evidence is found until the time it is offered in evidence.⁶⁷

Here, the inventory receipt shows that the drugs subject matter of this case passed from PO2 Lopez after he marked them to SPO4 Tolosa for the preparation of the inventory receipt. SPO4 Tolosa even signed the "property received by" portion of the inventory receipt, signifying that he indeed had in his possession said items while he prepared the said inventory receipt. However, there is nothing on record that describes what happened to the said items while they are in his possession, the condition he received them, the condition in which he transferred the said items to the next link in the chain, and the precautions he took to ensure that there had been no change in the condition of the items.⁶⁸ Even if this Court were to accept his statement that the seized items were in the possession of PO2 Lopez the entire time he was inventorying them,⁶⁹ there are still other incidents that shows that the chain of custody did not remain intact.

The records of this case indubitably show that after the seized drugs were inventoried, the accused, together with PO2 Lopez and SPO4 Tolosa, went to the sala of Judge Ante to return the search warrant and present the items they seized. PO2 Lopez, who had in his custody and possession the

⁶⁶ TSN, May 10, 2017, pp. 9-10.

⁶⁷ *People v. Villojan, Jr.*, G.R. No. 239635, July 22, 2019.

⁶⁸ See *People v. Ubungen*, 836 Phil. 888, 897 (2018).

⁶⁹ TSN, October 26, 2016, pp. 14-16.

seized drugs, placed them on Judge Ante's table to enable the latter's staff to list down the items seized. Yet, there is absence of evidence or testimony regarding the details surrounding the turnover of the seized drugs to the court personnel for recording purposes, specifically, the condition it was received from PO2 Lopez and the condition it was delivered back to him. PO2 Lopez could not even identify the said court personnel.

Just like SPO4 Tolosa, PO2 Lopez insists that the court personnel was never in possession of the seized drugs. Thus:

ATTY. MARQUEZ:

Q By the way [M]r. witness, when you presented these items to the issuing judge, the one who issued the search warrant, to whom did you give these seized items:

A Upon arrival at the office of Judge Ante, I immediately approached him and presented the seized item and then he instructed one of his staff to make a receipt sir.

Q Who did you [present] to the honorable issuing judge?

A We [informed the judge] that the items we were holding are those items that we seized in connection to the search warrant he issued to us sir.

Q Are there employees of the issuing judge who listed the seized items when you presented to him?

A There [was] sir.

Q **Did you get off hold the seized items or did you put it in a table?**

A **Yes, it was on the top of the table of the judge and the secretary made the receipt visibly looking and listing the items we returned sir.**

Q Did they sign receipt (interrupted).

COURT:

What is your point, Atty. Marquez?

ATTY. MARQUEZ:

The chain of custody your Honor. Because every possessor of the seized items should sign by the person who is in possession of the seized items your Honor.

PROS. DULDULAO:

Your Honor, the return is the best evidence your Honor.

COURT:

That is why, I want to know your point. You answer that particular question.

A **We did not [indicate] on the chain of custody because the employce of Judge Ante, he did not even hold the items, he just**

saw it and noted it. I am the one who scrutinized it and presented it to the honorable judge sir.⁷⁰

It is simply hard to believe the claim of PO2 Lopez that the court personnel never held temporary custody of the seized drugs while he was listing them down. It does not escape this Court's notice that before PO2 Lopez claimed that he was the one scrutinizing the items, he already testified that he "placed the items seized on the table" and the court personnel was "visibly looking and listing the item x x x."⁷¹ From PO2 Lopez's own statement, it can reasonably be deduced that the court personnel took hold of the seized drugs to examine the same so as to allow him to properly record them.

The second link in the chain of custody was also breached. This involves the turn-over of the confiscated drugs to the police station, the recording of the incident, and the preparation of the necessary documents, such as the request for laboratory examination of the seized drugs.⁷²

PO2 Lopez again claims that he did not turnover the seized drugs to anyone at the police station. So as not to break the chain of custody over the seized drugs, he was even the one who prepared the request for laboratory testing of the seized items. The pertinent portion of his testimony reads:

ATTY. MARQUEZ:

Q When you arrived at the PNP Vigan City, to whom did you give the seized items for documentation?

A No one accepted and not to brake the chain of custody of the item sir.

Q To protect the integrity or to protect the evidentiary character of those seized items, you decided to hold it the seized items on your own?

A Yes sir.

COURT:

Q Who prepared the letter request?

A I[,] your Honor.

Q Who delivered the same?

A I[,] your Honor.

Q Including the items seized?

A Yes[,] your Honor.

Q Alone?

A I have one companion, the drive your Honor.

Q When did you do that?

⁷⁰ TSN, June 8, 2016. p. 19. (Emphasis supplied).

⁷¹ *Id.*

⁷² *People v. Villojan, Jr.* G.R. No. 239635, July 22, 2019.

A At about 5:00 of the same date your Honor.

Q You are saying that after you prepared the letter request, you proceeded to the crime laboratory?

A Yes[,] your Honor.⁷³

His claim, however, is belied by the request for laboratory examination, which bears the signature of P/Supt. Del Prado, thereby signifying that he turned over the seized drugs to the latter for the preparation of the request. PO2 Lopez's claim that P/Supt. Del Prado merely signed the request but he was the one who prepared it is incredible.⁷⁴ It is unbelievable that the chief of police, no less, will blindly sign such request, knowing the stringent requirements in drugs cases, without inspecting closely the items to be sent for laboratory testing.

Verily, the dearth of specific and detailed descriptions of how the seized items had been preserved while their custody is being transferred from one person to another, amounts to a broken and unreliable chain of custody.⁷⁵

The third link was also broken. The third link in the chain of custody involves the delivery by the investigating officer of the illegal drug to the forensic chemist.⁷⁶ Even if the seized drugs were correctly brought to the crime laboratory for testing by PO2 Lopez considering that he was also the investigating officer in this case, serious breach in the chain of custody cannot be denied.

The pictures of the containers containing the dangerous drugs seized, the inventory receipt as well as the joint affidavit of the police officers consistently show that the medicine bottle is marked as BRAL 08-26-15 "A" while the plastic film container is marked as BRAL 08-26-15 "B." However, what was received by PO3 Quitevis and subsequently turned over to PSI Baligod for testing are a glass vial marked as BRAL 08-26-15 "A" and a plastic film container marked as BRAL 08-26-15 "C."⁷⁷

While the medicine bottle marked as BRAL 08-26-15 "A" is made of glass, this Court cannot venture into guesswork or supposition and rule that the container with the alleged drugs sent to the laboratory for testing *vis-à-vis* the one actually tested are the same considering that the prosecution provided no explanation for this glaring and obvious variance.⁷⁸

⁷³ TSN, June 8, 2016, p. 20.

⁷⁴ *Id.* at 21.

⁷⁵ *People v. Sultan*, G.R. No. 225210, August 7, 2019, 912 SCRA 446, 466.

⁷⁶ *People v. Del Rosario*, G.R. No. 235658, June 22, 2020.

⁷⁷ TSN, March 9, 2016, p. 5; TSN, August 3, 2016, p. 5.

⁷⁸ *Supra* note 67 at 901.

As for the plastic film container and the contents of which that were actually tested, there is no mistaking that they could not have been the one seized during the implementation of the search warrant subject of this case. The inventory receipt and the joint affidavit executed by the police officers show that the item marked as BRAL 08-26-15 "C" pertains to the "[t]hirty two (32) pieces of 2x3 transparent plastic sachet[s] believed to be used in repacking *shabu* x x x."⁷⁹ The plastic film container cannot, by any stretch of the imagination, be mistaken for transparent plastic sachets.

In sum, the gaps in the chain of custody raise serious uncertainty on whether the drugs tested and presented in evidence were the very drugs found in the possession of the petitioner during the implementation of the search warrant involving him, thereby fatally compromising their integrity and evidentiary value. This lingering doubt constrains this Court to acquit the petitioner.

FOR THESE REASONS STATED, the petition is **GRANTED**. The Decision dated May 31, 2019 rendered by the Court of Appeals in CA-G.R. CR No. 41271, which affirmed the November 2, 2017 Joint Decision rendered by the Regional Trial Court of Vigan City, Ilocos Sur, Branch 20 in Criminal Case Nos. 7713-V-2015 and 7714-V-2015, finding petitioner Espiridion Q. Braganza guilty beyond reasonable doubt of violation of Sections 11 and 15, Article II of Republic Act No. 9165 is **REVERSED and SET ASIDE**.

Petitioner Espiridion Q. Braganza is **ACQUITTED** and is immediately ordered **RELEASED** from detention unless he is being lawfully held for some other legal ground.

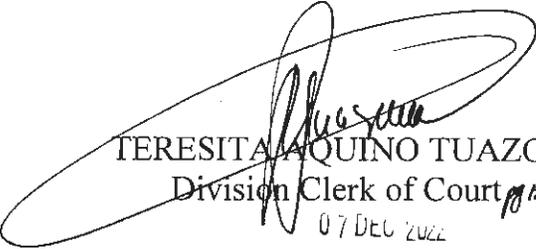
Let a copy of this Resolution be furnished to the Jail Warden, Provincial Jail, Taleb, Bantay, Ilocos Sur, for immediate implementation. Jail Warden, Provincial Jail, Taleb, Bantay, Ilocos Sur is directed to report the action they had taken to this Court within five (5) days from receipt of this Resolution. Copies of this Resolution shall also be furnished to the Police General of the Philippine National Police and the Director General of the Philippine Drug Enforcement Agency for their information.

Let an entry of final judgment be issued immediately.

⁷⁹ Records, pp. 69, 72.

SO ORDERED.”

By authority of the Court:


 TERESITA AQUINO TUAZON
 Division Clerk of Court
 07 DEC 2022

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 Vigan City, Ilocos Sur
 (Crim. Case No. 7713-V-2015 to 7714-V-2015)

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Please notify the Court of any change in your address.
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