

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROBERTO HOLGADO Y DELA CRUZ AND ANTONIO MISAREZ Y ZARAGA, ACCUSED-APPELLANTS.

G.R. No. 207992. August 11, 2014

Ponente: LEONEN, J.

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LEONEN, J.:

Law enforcers should not trifle with the legal requirement to ensure integrity in the chain of custody of seized dangerous drugs and drug paraphernalia. This is especially true when only a miniscule amount of dangerous drugs is alleged to have been taken from the accused.

This resolves an appeal from a conviction for illegal sale of dangerous drugs or for violation of Section 5 of Republic Act No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

Accused-appellants Roberto Holgado y Dela Cruz (Holgado) and Antonio Misarez y Zaraga (Misarez) were charged in an information dated January 19, 2007, as follows:

On or about January 17, 2007, in Pasig City and within the jurisdiction of this Honorable Court, the accused conspiring and confederating together and both of them mutually helping and aiding with (sic) one another, and not being lawfully authorized to sell any dangerous drug, did then and there wilfully, unlawfully and feloniously sell, deliver and give away to PO1 Philip Aure, one (1) piece of heat-sealed transparent plastic sachet containing five (5) centigrams (0.05 gram) of white crystalline substance, which was found to (sic) positive to the test for methylamphetamine hydrochloride (shabu), a dangerous drug, in violation of the said law.

Contrary to law.[1]

Holgado and Misarez were also charged with possession of dangerous drugs, and possession of drug paraphernalia, but subsequently acquitted.

As alleged by the prosecution, in December 2006, the Pasig City Police received reports of illegal drug activities of Holgado along C. Raymundo Street, Pasig City.[2] After surveillance operations, a search warrant was issued against Holgado. Acting on the search warrant, the Pasig City Chief of Police instructed his officers to, if possible, first conduct a buy-bust operation before actually enforcing the search warrant.[3]

In the evening of January 17, 2007, police operatives went to No. 17, C. Raymundo Street for the buy-bust operation. PO1 Philip Aure, acting as poseur-buyer and accompanied by the police informant, approached Holgado who was then part of a drinking session with two (2) companions. Holgado asked the informant if he was buying drugs while at the same time offering him a drink. The informant accepted the drink and introduced PO1 Aure as a drug user. PO1 Aure then handed Holgado two (2) marked one hundred peso bills. Holgado asked PO1 Aure and the informant to wait as the drugs were with his “kumpare” who was then in the restroom.[4]

Holgado called Misarez. After some time, co-accused Antonio Misarez stepped out of the restroom and asked

who was buying drugs. PO1 Aure and the informant answered, “Kami.” Misarez then handed a plastic sachet containing a white crystalline substance to PO1 Aure. PO1 Aure examined the sachet’s contents and took out his cellphone. This was the pre-arranged signal to the other police operatives that the sale of drugs had been consummated.[5]

The police operatives then approached PO1 Aure. When PO1 Aure saw his companions approaching, he seized Misarez’s hand, but the latter was able to escape and lock himself inside the house. Holgado, too, was able to flee into the house and join Misarez. The police operatives managed to break open the wooden door with a crowbar. By then, however, Holgado and Misarez had managed to leave the house through a passageway in the ceiling leading to an adjoining house. PO3 Rolando Abuyme and PO2 Arnulfo Dancel managed to get inside the adjoining house where they apprehended Holgado and Misarez.[6]

The search warrant was then enforced “in coordination with a barangay official and in the presence of some media people.”[7] The search allegedly yielded several drugs and drug paraphernalia.[8] These items (i.e., other than the plastic sachet containing a white crystalline substance supposedly sold to PO1 Aure) were the subject of three (3) other cases. These other cases have since been dismissed.[9]

As noted in the Regional Trial Court’s August 17, 2009 decision, PO3 Abuyme prepared an inventory of the seized items.[10] Specifically with respect to the plastic sachet which was the basis of the charge of illegal sale of dangerous drugs, PO1 Aure supposedly marked the plastic sachet handed to him by Misarez with “RH-PA”[11] at the site of the buy-bust operation.

Following their arrest, Holgado and Misarez were charged with violating Sections 5 (sale of dangerous drugs),[12] 11 (possession of dangerous drugs),[13] and 12 (possession of drug paraphernalia)[14] of Republic Act No. 9165. The case for violating Section 5 was docketed as Criminal Case No. 15338-D. The cases for violating Section 11 were docketed as Criminal Case Nos. 15339-D and 15341-D. The case for violating Section 12 was docketed as Criminal Case No. 15340-D. The charge for violating Section 5 was in view of the plastic sachet containing a white crystalline substance supposedly sold by Holgado to PO1 Aure. The charges for violations of Sections 11 and 12 were in view of the items supposedly seized in enforcing the search warrant.

During trial, the prosecution presented as witnesses PO1 Aure and the apprehending officers PO2 Roberto Castulo and PO3 Abuyme. The defense presented as its witnesses accused-appellants Holgado and Misarez, as well as their neighbor, Carlos Marquing, and Holgado’s wife, Maribel Villareal.[15]

In their testimonies, accused-appellants claimed that no buy-bust operation was conducted. Instead, the police operatives allegedly barged into Holgado’s house and arrested accused-appellants who were then merely having a few drinks. While Holgado and Misarez were handcuffed, the police operatives conducted a supposed search of Holgado’s house. They were then taken to the police station. Defense witnesses Marquing and Villareal corroborated accused-appellants’ claims.[16]

After trial, the Pasig City Regional Trial Court, Branch 154 found Holgado and Misarez guilty of illegal sale of dangerous drugs (i.e., violating Section 5 of Republic Act No. 9165). They were acquitted of the charges pertaining to Section 11 of Republic Act No. 9165 as the drugs supposedly seized were not introduced in evidence. Holgado, the sole accused in Criminal Case No. 15340-D, was also acquitted of the charges relating to Section 12 of Republic Act No. 9165 as the paraphernalia to which PO2 Castulo testified to in court were different from those indicated in the inventory supposedly made when the search warrant was enforced.[17]

Holgado and Misarez were sentenced to suffer the penalty of life imprisonment and to pay a penalty of P1 million. The dispositive portion of the Regional Trial Court’s decision reads:

WHEREFORE, premises considered, judgment is hereby rendered –

In Crim. Case No. 15338-D finding both the accused Roberto Holgado and Antonio Misarez GUILTY beyond reasonable doubt of the crime of violation of Section 5 of R.A. 9165 (sale of dangerous drug), and each of them is hereby sentenced to suffer the penalty of life imprisonment. Each of them is also ordered to pay a fine of One Million Pesos (P1,000,000.00).

In Crim. Cases Nos. 15339-D and 15341-D for violation of Section 11 of R.A. 9165 (possession of dangerous drug) against accused Roberto Holgado and Antonio Misarez, they are hereby found NOT GUILTY of the said offense for lack of evidence.

In Crim. Case No. 15340-D for violation of Section 12 of R.A. 9165 (possession of drug paraphernalia) against Roberto Holgado, judgment is hereby rendered finding the said accused NOT GUILTY of the said offense charged against him on the ground of reasonable doubt.

The dangerous drugs and drug paraphernalia allegedly obtained from the persons of the accused and subject of the Informations are hereby ordered delivered forthwith to the Philippine Drug Enforcement Agency (PDEA) for proper disposition.

Considering the penalty imposed by the Court on the accused ROBERTO HOLGADO and ANTONIO MISAREZ for violation of Section 5 of R.A. 9165 (sale of dangerous drug), their immediate commitment to the National Bilibid Prisons is hereby ordered.

SO ORDERED.[18] (Underscoring in the original)

In the decision dated February 18, 2013,[19] the Court of Appeals affirmed the Regional Trial Court's decision convicting Holgado and Misarez.

On March 4, 2013, Holgado and Misarez filed their notice of appeal.[20]

In the resolution dated September 11, 2013, this court noted the records forwarded by the Court of Appeals and informed the parties that they may file their supplemental briefs.[21]

On November 6, 2013, the Office of the Solicitor General filed a manifestation and motion, on behalf of the People of the Philippines, noting that it would no longer file a supplemental brief.[22]

On December 27, 2013, Holgado and Misarez filed their joint supplemental brief[23] where they assailed the supposed lack of compliance with the requirements set by the chain of custody of seized drugs and drug paraphernalia as provided by Section 21 of Republic Act No. 9165.

For resolution is the issue of whether Holgado's and Misarez's guilt beyond reasonable doubt for violating Section 5 of Republic Act No. 9165 was established. Subsumed in the resolution of this issue is the question of whether the prosecution was able to establish compliance with the requisites of Section 21 of Republic Act No. 9165.

The elements that must be established to sustain convictions for illegal sale of dangerous drugs are settled. In *People v. Morales*,[24] this court stated:

In actions involving the illegal sale of dangerous drugs, the following elements must first be established: (1) proof that the transaction or sale took place and (2) the presentation in court of the corpus delicti or the illicit drug as evidence.[25]

On corpus delicti, Section 21 of Republic Act No. 9165, as amended by Republic Act No. 10640, provides for the custody and disposition of confiscated, seized, and/or surrendered drugs and/or drug paraphernalia. Specifically

with respect to custody before the filing of a criminal case, Section 21, as amended, provides:

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 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.

(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 by the forensic laboratory examiner, shall be issued immediately upon the receipt of the subject item/s: Provided, That when the volume of 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 immediately upon completion of the said examination and certification[.] (Emphasis supplied)

As this court declared in *People v. Morales*, “failure to comply with Paragraph 1, Section 21, Article II of RA 9165 implie[s] a concomitant failure on the part of the prosecution to establish the identity of the corpus delicti.”[26] It “produce[s] doubts as to the origins of the [seized paraphernalia].”[27]

The significance of ensuring the integrity of drugs and drug paraphernalia in prosecutions under Republic Act No. 9165 is discussed in *People v. Belocura*: [28]

Worse, the Prosecution failed to establish the identity of the prohibited drug that constituted the corpus delicti itself. The omission naturally raises grave doubt about any search being actually conducted and warrants the suspicion that the prohibited drugs were planted evidence.

In every criminal prosecution for possession of illegal drugs, the Prosecution must account for the custody of the incriminating evidence from the moment of seizure and confiscation until the moment it is offered in evidence. That account goes to the weight of evidence. It is not enough that the evidence offered has probative

value on the issues, for the evidence must also be sufficiently connected to and tied with the facts in issue. The evidence is not relevant merely because it is available but that it has an actual connection with the transaction involved and with the parties thereto. This is the reason why authentication and laying a foundation for the introduction of evidence are important.[29] (Emphasis supplied)

In *Malilin v. People*,^[30] this court explained that the exactitude required by Section 21 goes into the very nature of narcotics as the subject of prosecutions under Republic Act No. 9165:

Indeed, the likelihood of tampering, loss or mistake with respect to an exhibit is greatest when the exhibit is small and is one that has physical characteristics fungible in nature and similar in form to substances familiar to people in their daily lives. *Graham vs. State* positively acknowledged this danger. In that case where a substance later analyzed as heroin—was handled by two police officers prior to examination who however did not testify in court on the condition and whereabouts of the exhibit at the time it was in their possession—was excluded from the prosecution evidence, the court pointing out that the white powder seized could have been indeed heroin or it could have been sugar or baking powder. It ruled that unless the state can show by records or testimony, the continuous whereabouts of the exhibit at least between the time it came into the possession of police officers until it was tested in the laboratory to determine its composition, testimony of the state as to the laboratory's findings is inadmissible.

A unique characteristic of narcotic substances is that they are not readily identifiable as in fact they are subject to scientific analysis to determine their composition and nature. The Court cannot reluctantly close its eyes to the likelihood, or at least the possibility, that at any of the links in the chain of custody over the same there could have been tampering, alteration or substitution of substances from other cases—by accident or otherwise—in which similar evidence was seized or in which similar evidence was submitted for laboratory testing. Hence, in authenticating the same, a standard more stringent than that applied to cases involving objects which are readily identifiable must be applied, a more exacting standard that entails a chain of custody of the item with sufficient completeness if only to render it improbable that the original item has either been exchanged with another or been contaminated or tampered with.^[31] (Emphasis supplied)

Compliance with the chain of custody requirement provided by Section 21, therefore, ensures the integrity of confiscated, seized, and/or surrendered drugs and/or drug paraphernalia in four (4) respects: first, the nature of the substances or items seized; second, the quantity (e.g., weight) of the substances or items seized; third, the relation of the substances or items seized to the incident allegedly causing their seizure; and fourth, the relation of the substances or items seized to the person/s alleged to have been in possession of or peddling them. Compliance with this requirement forecloses opportunities for planting, contaminating, or tampering of evidence in any manner.

By failing to establish identity of corpus delicti, non-compliance with Section 21 indicates a failure to establish an element of the offense of illegal sale of dangerous drugs. It follows that this non-compliance suffices as a ground for acquittal. As this court stated in *People v. Lorenzo*:^[32]

In both illegal sale and illegal possession of prohibited drugs, conviction cannot be sustained if there is a persistent doubt on the identity of the drug. The identity of the prohibited drug must be established with moral certainty. Apart from showing that the elements of possession or sale are present, the fact that the substance illegally possessed and sold in the first place is the same substance offered in court as exhibit must likewise be established with the same degree of certitude as that needed to sustain a guilty verdict.^[33] (Emphasis supplied)

The prosecution's sweeping guarantees as to the identity and integrity of seized drugs and drug paraphernalia will not secure a conviction. Not even the presumption of regularity in the performance of official duties will suffice. In fact, whatever presumption there is as to the regularity of the manner by which officers took and maintained

custody of the seized items is “negated.”[34] Republic Act No. 9165 requires compliance with Section 21.

Even the doing of acts which ostensibly approximate compliance but do not actually comply with the requirements of Section 21 does not suffice. In *People v. Magat*,[35] for instance, this court had occasion to emphasize the inadequacy of merely marking the items supposedly seized: “Marking of the seized drugs alone by the law enforcers is not enough to comply with the clear and unequivocal procedures prescribed in Section 21 of R.A. No. 9165.”[36]

The exactitude which the state requires in handling seized narcotics and drug paraphernalia is bolstered by the amendments made to Section 21 by Republic Act No. 10640. Section 21(1), as amended, now includes the following proviso, thereby making it even more stringent than as originally worded:

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:

In *People v. Nandi*,[37] this court explained that four (4) links “should be established in the chain of custody of the confiscated item: 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 from the forensic chemist to the court.”[38]

In *Nandi*, where the prosecution failed to show how the seized items were handled following the actual seizure and, thereafter, turned over for examination, this court held that the accused must be acquitted:

After a closer look, the Court finds that the linkages in the chain of custody of the subject item were not clearly established. As can be gleaned from his forequoted testimony, PO1 Collado failed to provide informative details on how the subject shabu was handled immediately after the seizure. He just claimed that the item was handed to him by the accused in the course of the transaction and, thereafter, he handed it to the investigator.

There is no evidence either on how the item was stored, preserved, labeled, and recorded. PO1 Collado could not even provide the court with the name of the investigator. He admitted that he was not present when it was delivered to the crime laboratory. It was Forensic Chemist Bernardino M. Banac, Jr. who identified the person who delivered the specimen to the crime laboratory. He disclosed that he received the specimen from one PO1 Cuadra, who was not even a member of the buy-bust team. Per their record, PO1 Cuadra delivered the letter-request with the attached seized item to the CPD Crime Laboratory Office where a certain PO2 Semacio recorded it and turned it over to the Chemistry Section.

In view of the foregoing, the Court is of the considered view that chain of custody of the illicit drug seized was compromised. Hence, the presumption of regularity in the performance of duties cannot be applied in this case. Given the flagrant procedural lapses the police committed in handling the seized shabu and the obvious evidentiary gaps in the chain of its custody, a presumption of regularity in the performance of duties cannot be made in this case. A presumption of regularity in the performance of official duty is made in the context of an existing rule of law or statute authorizing the performance of an act or duty or prescribing a procedure in the performance thereof. The presumption applies when nothing in the record suggests that the law enforcers deviated from the standard conduct of official duty required by law; where the official act is irregular on its face, the presumption cannot arise. In light of the flagrant lapses we noted, the lower courts were obviously wrong when they relied on the presumption of regularity in the performance of official duty.

With the chain of custody in serious question, the Court cannot gloss over the argument of the accused regarding the weight of the seized drug. The standard procedure is that after the confiscation of the dangerous substance, it

is brought to the crime laboratory for a series of tests. The result thereof becomes one of the bases of the charge to be filed.[39] (Citations omitted)

In this case, the defense points out that all that the prosecution claimed, with respect to the handling of the sachet supposedly handed by Misarez to PO1 Aure, was that PO1 Aure supposedly marked it “RH-PA” at the scene of the buy-bust operation.[40]

While the buy-bust operation team allegedly conducted an inventory of the seized items, it is unclear if this inventory was limited to those seized pursuant to the enforcement of the search warrant (i.e., after the conduct of the buy-bust operation) or was inclusive of whatever items seized during the buy-bust operation. In any case, this inventory was discredited as Holgado was acquitted by the Regional Trial Court of the charge of illegal possession of drug paraphernalia because the inventory was found to be unreliable vis-a-vis the testimony of PO2 Castulo. The paraphernalia to which PO2 Castulo testified to in court were different from those indicated in the inventory supposedly made when the search warrant was enforced.

There have been claims to the effect that the search warrant was enforced “in coordination with a barangay official and in the presence of some media people.”[41] However, this “barangay official” and these “media people” have neither been identified nor presented as witnesses. In any case, even if it were to be granted that these individuals took part in the events that transpired in the evening of January 17, 2007, their participation was alleged to have been only with respect to the enforcement of the search warrant. It did not extend to the physical inventory and taking of photographs of the seized items arising from the buy-bust operation, as required by Section 21. For that matter, it was not even shown that photographs of the sachet marked as “RH-PA” were taken. Per his own testimony, PO1 Aure himself doubted if any photograph was taken.[42]

The defense also points out that “PO1 Aure . . . failed to disclose who, in particular, held the sachet of shabu from the crime scene (after it was marked) up to the police station, and finally to the crime laboratory for the requisite chemical examination.”[43] It added that “nothing on (sic) the records showed who, in particular, submitted/brought the specimen to the crime laboratory for examination.”[44]

In *People v. Gatlabayan*[45] and *People v. Sitco*,[46] this court considered as fatal to the prosecution’s case the lack of evidence on the identity of the person who submitted the specimen for examination to the PNP Crime Laboratory and/or the forensic chemist. In *Sitco*, this court characterized the lack of evidence on this matter as “glaring gaps or missing links in the chain of custody of evidence, raising doubt as to the identity of the seized items and necessarily their evidentiary value.”[47] This court also underscored that “[t]his broken chain of custody is especially significant given that what are involved are fungible items that may be easily altered or tampered with.”[48]

In sum, the integrity of three (3) of the four (4) links enumerated in *People v. Nandi*[49] (i.e., seizure and marking, turnover by the apprehending officer to the investigating officer, and turnover by the investigating officer to the forensic chemist) has been cast in doubt. As in *Nandi*, this doubt must be resolved in favor of accused-appellants.

It is true that Section 21(1), as amended, now includes a proviso to the effect that “noncompliance of (sic) 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.” However, the prosecution has not shown that when the buy-bust operation was allegedly conducted on January 17, 2007 and the sachet was supposedly seized and marked, there were “justifiable grounds” for dispensing with compliance with Section 21. Rather, it merely insisted on its self-serving assertion that the integrity of the seized sachet has nevertheless been, supposedly, preserved. The omission became more

glaring considering that the prosecution asserted that the events of January 17, 2007 entailed a carefully planned operation, engendered by reports of drug-related activities along C. Raymundo Street. This planning even led to the application for and issuance of a search warrant.

Apart from the officers' glaring non-compliance with Section 21, two (2) circumstances are worth underscoring in this case. First, the shabu supposedly seized amounted to five (5) centigrams (0.05 gram). This quantity is so miniscule it amounts to only about 2.5% of the weight of a five-centavo coin (1.9 grams) or a one-centavo coin (2.0 grams). Second, Holgado and Misarez were acquitted by the Regional Trial Court of all other charges (i.e., for possession of dangerous drugs and for possession of drug paraphernalia).

While the miniscule amount of narcotics seized is by itself not a ground for acquittal, this circumstance underscores the need for more exacting compliance with Section 21. In *Malilin v. People*,^[50] this court said that "the likelihood of tampering, loss or mistake with respect to an exhibit is greatest when the exhibit is small and is one that has physical characteristics fungible in nature and similar in form to substances familiar to people in their daily lives."^[51]

Moreover, the Regional Trial Court's observations which led to accused-appellants' acquittal for violations of Sections 11 and 12 of Republic Act No. 9165 should have warned the Regional Trial Court and the Court of Appeals that something was amiss.

The events of January 17, 2007 should be taken and appreciated as a whole even as they gave rise to four (4) distinct criminal cases which were separately docketed. The reasons for acquitting accused-appellants for the charges of violating Sections 11 and 12 (i.e., the prosecution's complete failure to introduce in evidence the drugs seized and the testifying police operative's own failure to properly account for the paraphernalia he himself took part in seizing)^[52] seriously cast doubt, not only on accused-appellants' own guilt, but more so on the soundness and reliability of the measures taken and procedures followed by the police operatives. These circumstances cast a heavy shadow on the integrity of the operation and the police operatives themselves.

Trial courts should meticulously consider the factual intricacies of cases involving violations of Republic Act No. 9165. All details that factor into an ostensibly uncomplicated and barefaced narrative must be scrupulously considered. Courts must employ heightened scrutiny, consistent with the requirement of proof beyond reasonable doubt, in evaluating cases involving miniscule amounts of drugs. These can be readily planted and tampered. Also, doubt normally follows in cases where an accused has been discharged from other simultaneous offenses due to mishandling of evidence. Had the Regional Trial Court and the Court of Appeals been so judicious in this case, a speedier resolution would have been handed to Holgado and Misarez whose guilt beyond reasonable doubt was not established.

It is lamentable that while our dockets are clogged with prosecutions under Republic Act No. 9165 involving small-time drug users and retailers, we are seriously short of prosecutions involving the proverbial "big fish." We are swamped with cases involving small fry who have been arrested for miniscule amounts. While they are certainly a bane to our society, small retailers are but low-lying fruits in an exceedingly vast network of drug cartels. Both law enforcers and prosecutors should realize that the more effective and efficient strategy is to focus resources more on the source and true leadership of these nefarious organizations. Otherwise, all these executive and judicial resources expended to attempt to convict an accused for 0.05 gram of shabu under doubtful custodial arrangements will hardly make a dent in the overall picture. It might in fact be distracting our law enforcers from their more challenging task: to uproot the causes of this drug menace. We stand ready to assess cases involving greater amounts of drugs and the leadership of these cartels.

WHEREFORE, premises considered, the decision dated February 18, 2013 of the Court of Appeals in CA-G.R.

CR-HC No. 04635 is REVERSED and SET ASIDE. Accused-appellants Roberto Holgado y Dela Cruz and Antonio Misarez y Zaraga are hereby ACQUITTED for failure of the prosecution to prove their guilt beyond reasonable doubt. They are ordered immediately RELEASED from detention, unless they are confined for any other lawful cause.

Let a copy of this decision be furnished to the Director of the Bureau of Corrections, Muntinlupa City, for immediate implementation. The Director of the Bureau of Corrections is directed to report to this court within five (5) days from receipt of this decision the action he has taken. Copies shall also be furnished to the Director General of Philippine National Police and the Director General of Philippine Drugs Enforcement Agency for their information.

The Regional Trial Court is directed to turn over the seized sachet of methamphetamine hydrochloride to the Dangerous Drugs Board for destruction in accordance with law.

SO ORDERED.

Velasco, Jr., (Chairperson), Peralta, Villarama, Jr.[*], and Mendoza, JJ., concur.

ORDER OF RELEASE

TO: The Director
Bureau of Corrections
1770 Muntinlupa City

GREETINGS:

WHEREAS, the Supreme Court on August 11, 2014 promulgated a Decision in the above-entitled case, the dispositive of which reads:

"WHEREFORE, premises considered, the decision dated February 18, 2013 of the Court of Appeals in CA-G.R. CR-HC No. 04635 is REVERSED and SET ASIDE. Accused-appellants Roberto Holgado y Dela Cruz and Antonia Misarez y Zaraga are hereby ACQUITTED for failure of the prosecution to prove their guilt beyond reasonable doubt. They are ordered immediately RELEASED from detention, unless they are confined for any other lawful cause.

Let a copy of this decision be furnished to the Director of the Bureau of Corrections, Muntinlupa City, for immediate implementation. The Director of Bureau of Corrections is directed to report to this court within five (5) days from receipt of this decision the action he has taken. Copies shall also be furnished to the Director General of Philippine National Police and the Director General of the Philippine Drugs Enforcement Agency for their information.

The Regional Trial Court is directed to turn over the seized sachet of methamphetamine hydrochloride to the Dangerous drugs Board for destruction in accordance with law.

SO ORDERED.

NOW, THEREFORE, You are hereby ordered to immediately release ROBERTO HOLGADO y DELA CRUZ and ANTONIO MISAREZ y ZARAGA unless there are other causes fro which they should be further detained, and to return this Order with the certificate of your proceedings within five (5) days from notice hereof.

GIVEN by the Honorable PRESBITERO J. VELASCO, JR., Chairperson of the Third Division of the Supreme

Court of the Philippines, this 11[th] day of August 2014.

Very truly yours,

(SGD.)

WILFREDO V. LAPITAN

Division Clerk of Court

September 5, 2014

NOTICE OF JUDGMENT

Sirs/Mesdames:

Please take notice that on ___August 11, 2014___ a Decision, copy attached herewith, was rendered by the Supreme Court in the above-entitled case, the original of which was received by this Office on September 5, 2014 at 10:45 A.m.

Very truly yours,

(SGD)

WILFREDO V. LAPITAN

Division Clerk of Court

[*] Designated as Acting Member in view of the vacancy in the Third Division per Special Order No. 1691 dated May 22, 2014.

[1] Rollo, pp. 3–4.

[2] CA rollo, p. 27.

[3] Id. at 28.

[4] Id. at 28–29.

[5] Id. at 29.

[6] CA rollo, pp. 29–30 and rollo, p. 5.

[7] CA rollo, p. 30.

[8] Id. at 29–30.

[9] Rollo, pp. 2–3.

[10] CA rollo, p. 30.

[11] Rollo, p. 5 and CA rollo, p. 158.

[12] Section 5. Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals. - The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (P500,000.00) to Ten million pesos (P10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute dispatch in transit or transport any dangerous drug, including any and all species

of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions.

The penalty of imprisonment ranging from twelve (12) years and one (1) day to twenty (20) years and a fine ranging from One hundred thousand pesos (P100,000.00) to Five hundred thousand pesos (P500,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any controlled precursor and essential chemical, or shall act as a broker in such transactions.

If the sale, trading, administration, dispensation, delivery, distribution or transportation of any dangerous drug and/or controlled precursor and essential chemical transpires within one hundred (100) meters from the school, the maximum penalty shall be imposed in every case.

For drug pushers who use minors or mentally incapacitated individuals as runners, couriers and messengers, or in any other capacity directly connected to the dangerous drugs and/or controlled precursors and essential chemical trade, the maximum penalty shall be imposed in every case.

If the victim of the offense is a minor or a mentally incapacitated individual, or should a dangerous drug and/or a controlled precursor and essential chemical involved in any offense herein provided be the proximate cause of death of a victim thereof, the maximum penalty provided for under this Section shall be imposed.

The maximum penalty provided for under this Section shall be imposed upon any person who organizes, manages or acts as a "financier" of any of the illegal activities prescribed in this Section.

The penalty of twelve (12) years and one (1) day to twenty (20) years of imprisonment and a fine ranging from One hundred thousand pesos (P100,000.00) to Five hundred thousand pesos (P500,000.00) shall be imposed upon any person, who acts as a "protector/coddler" of any violator of the provisions under this Section.

[13] Section 11. Possession of Dangerous Drugs. - The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (P500,000.00) to Ten million pesos (P10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall possess any dangerous drug in the following quantities, regardless of the degree of purity thereof:

- (1) 10 grams or more of opium;
- (2) 10 grams or more of morphine;
- (3) 10 grams or more of heroin;
- (4) 10 grams or more of cocaine or cocaine hydrochloride;
- (5) 50 grams or more of methamphetamine hydrochloride or "shabu";
- (6) 10 grams or more of marijuana resin or marijuana resin oil;
- (7) 500 grams or more of marijuana; and
- (8) 10 grams or more of other dangerous drugs such as, but not limited to, methylenedioxymethamphetamine (MDA) or "ecstasy", paramethoxyamphetamine (PMA), trimethoxyamphetamine (TMA), lysergic acid diethylamine (LSD), gamma hydroxyamphetamine (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, as determined and promulgated by the Board in accordance to Section 93, Article XI of this Act.

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

- (1) Life imprisonment and a fine ranging from Four hundred thousand pesos (P400,000.00) to Five hundred thousand pesos (P500,000.00), if the quantity of methamphetamine hydrochloride or "shabu" is ten (10) grams

or more but less than fifty (50) grams;

(2) Imprisonment of twenty (20) years and one (1) day to life imprisonment and a fine ranging from Four hundred thousand pesos (P400,000.00) to Five hundred thousand pesos (P500,000.00), if the quantities of dangerous drugs are five (5) grams or more but less than ten (10) 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 three hundred (300) grams or more but less than five (hundred) 500) grams of marijuana; and(3) Imprisonment of twelve (12) years and one (1) day to twenty (20) years and a fine ranging from Three hundred thousand pesos (P300,000.00) to Four hundred thousand pesos (P400,000.00), 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.

[14] 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.

The possession of such equipment, instrument, apparatus and other paraphernalia fit or intended for any of the purposes enumerated in the preceding paragraph shall be prima facie evidence that the possessor has smoked, consumed, administered to himself/herself, injected, ingested or used a dangerous drug and shall be presumed to have violated Section 15 of this Act.

[15] Rollo, p. 4.

[16] CA rollo, pp. 32-33.

[17] Id. at 33-38.

[18] Id. at 37-38.

[19] Rollo, pp. 2-10.

[20] Id. at 12.

[21] Rollo, p. 17.

[22] Id. at 21-22.

[23] Id. at 28-37.

[24] G.R. No. 172873, March 19, 2010, 616 SCRA 223 [Per J. Del Castillo, Second Division].

[25] Id. at 235, citing *People v. Darisan*, 597 Phil. 479, 485 (2009) [Per J. Corona, First Division] and *People v. Partoza*, 605 Phil. 883 (2009) [Per J. Del Castillo, Second Division].

- [26] *People v. Morales*, G.R. No. 172873, March 19, 2010, 616 SCRA 223, 236 [Per J. Del Castillo, Second Division].
- [27] *People v. Laxa*, 414 Phil. 156, 170 (2001) [Per J. Mendoza, Second Division], as cited in *People v. Orteza*, G.R. No. 173051, July 31, 2007, 528 SCRA 750, 758 [Per J. Tinga, Second Division].
- [28] G.R. No. 173474, August 29, 2012, 679 SCRA 318 [Per J. Bersamin, First Division].
- [29] *Id.* at 337–338.
- [30] 576 Phil. 576 (2008) [Per J. Tinga, Second Division].
- [31] *Id.* at 588–589.
- [32] G.R. No. 184760, April 23, 2010, 619 SCRA 389 [Per J. Perez, Second Division].
- [33] *Id.* at 401.
- [34] *People v. Navarrete*, G.R. No. 185211, June 6, 2011, 650 SCRA 609, 618 [Per J. Carpio-Morales, Third Division]. See also *People v. Ulat*, G.R. No. 180504, October 5, 2011, 650 SCRA 607 [Per J. Leonardo-De Castro, First Division].
- [35] 588 Phil. 395 (2008) [Per J. Tinga, Second Division].
- [36] *Id.* at 97.
- [37] G.R. No. 188905, July 13, 2010, 625 SCRA 123 [Per J. Mendoza, Second Division].
- [38] *Id.* at 133, citing *People v. Zaida Kamad*, G.R. No. 174198, January 19, 2010, 610 SCRA 295 [Per J. Brion, Second Division].
- [39] *Id.* at 133–134.
- [40] Rollo, pp. 31–32; supplemental brief, pp. 4–5.
- [41] CA rollo, p. 30.
- [42] Rollo, p. 29; supplemental brief, p. 2.
- [43] *Id.* at 31; supplemental brief, p. 5.
- [44] *Id.*
- [45] G.R. No. 186467, July 13, 2011, 653 SCRA 803 [Per J. Mendoza, Third Division].
- [46] G.R. No. 178202, May 14, 2010, 620 SCRA 561 [Per J. Velasco, Jr., Third Division].
- [47] *Id.* at 576–577.
- [48] *Id.* at 577.
- [49] G.R. No. 188905, July 13, 2010, 625 SCRA 123 [Per J. Mendoza, Second Division], citing *People v. Zaida Kamad*, G.R. No. 174198, January 19, 2010, 610 SCRA 295 [Per J. Brion, Second Division].
- [50] 576 Phil. 576 (2008) [Per J. Tinga, Second Division].
- [51] *Id.* at 633.
- [52] CA rollo, pp. 33-38.

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