



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

HOWARD LESCANO y CARREON G.R. No. 214490
@ "TISOY",

Petitioner,

Present:

-versus-

CARPIO, *Chairperson*,
BRION,
DEL CASTILLO,
MENDOZA, and
LEONEN, *JJ.*

PEOPLE OF THE PHILIPPINES,
Respondent.

Promulgated:
13 JAN 2016

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DECISION

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 minuscule amount of dangerous drugs is alleged to have been taken from the accused."¹

This resolves an appeal of a conviction for illegal sale of dangerous drugs or for violation of Section 5² of Republic Act No. 9165, otherwise

¹ *People v. Holgado*, G.R. No. 207992, August 11, 2014, 732 SCRA 554, 556 [Per J. Leonen, Third Division].

² SEC. 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.

known as the Comprehensive Dangerous Drugs Act of 2002.

On July 10, 2008, an Information charging petitioner Howard Lescano (Lescano) with illegal sale of dangerous drugs was filed. This Information read:

That on or about the eight[h] (8th) day of July, 2008, in the City of Olongapo, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, while being under the influence of illegal drug, particularly THC-metabolites, did then and there wil[l]fully, and unlawfully and knowingly deliver and sell during a buy-bust operation, conducted at Tabacuhan Road, corner Tulio St., Sta. Rita, Olongapo City, to PO3 Hortencio Javier [one hundred pesos] ₱100.00 . . . worth of marijuana fruiting tops, which is a dangerous drug in one (1) heat[-]sealed transparent plastic sachet weighing one gram and four[-]tenths (1.4) of a gram.

CONTRARY TO LAW.³

According to the prosecution, on July 6, 2008, an informant sought the assistance of the City Anti-Illegal Drug Special Operation Team (CAIDSOT) of Olongapo City. The informant alleged that drug-pushing activities were taking place at the corner of Tulio and Tabacuhan Streets.⁴

Acting on this tip, the CAIDSOT monitored the area and allegedly found the informant's claims to be true. CAIDSOT operatives relayed the results of their surveillance to their Chief, P/Insp. Julius Javier (P/Insp. Javier). P/Insp. Javier then instructed them to conduct a buy-bust operation.⁵

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 (₱100,000.00) to Five hundred thousand pesos (₱500,000.00) 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 chemicals 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 (₱100,000.00) to Five hundred thousand pesos (₱500,000.00) shall be imposed upon any person, who acts as a "protector/coddler" of any violator of the provisions under this Section.

³ *Rollo*, p. 49, Court of Appeals Decision dated November 13, 2013.

⁴ *Id.*

⁵ *Id.*

A briefing for the operation took place. It was decided that PO3 Hortencio Javier (PO3 Javier) would be the poseur buyer and that he would be introduced by the informant to Lescano. In addition to PO3 Javier, the buy-bust team was composed of: PO1 Ferdinand Mataverde (PO1 Mataverde) as immediate back-up, PO1 Lawrence Reyes, PO1 Sherwin Tan, and P/Insp. Javier. SPO1 Allan Delos Reyes (SPO1 Delos Reyes) was assigned as the investigator and PO1 Lowela Buscas was designated as the recorder.⁶ A ₱100.00 bill with serial number CM283073 was set aside for the operation. PO3 Javier marked it by placing the letters “HJ” on its upper left corner.⁷ The team further agreed that PO3 Javier would remove his cap as a signal to the buy-bust team that the sale had already been consummated.⁸

PO3 Javier and the informant arrived at the corner of Tulio and Tabacuhan Streets at 4:40 p.m. on July 8, 2008. By then, the other members of the team were already within the area.⁹

While walking towards Tulio Street, the informant pointed to Lescano who was standing alone, about three (3) meters away, allegedly waiting for a prospective customer. PO1 Mataverde stayed behind about seven (7) meters from PO3 Javier and the informant.¹⁰

The informant introduced PO3 Javier to Lescano. Lescano asked PO3 Javier how much marijuana he was willing to buy. PO3 Javier responded by handing the marked ₱100 bill to Lescano.¹¹ Lescano then gave PO3 Javier a medium-sized plastic sachet supposedly containing marijuana.¹² At this, PO3 Javier gave the pre-arranged signal to the buy-bust team. PO1 Mataverde approached them and introduced himself as a police officer. He then frisked Lescano and recovered the buy-bust money.¹³

The rest of the buy-bust team arrived as Lescano was about to be handcuffed. PO3 Javier marked the medium-sized plastic sachet with the initials “HJ” and turned it over to SPO1 Delos Reyes. Lescano was then brought to the CAIDSOT office for investigation.¹⁴

Inside the CAIDSOT office, an inventory was allegedly conducted and photographs of the marked money and the sachet were taken. The

⁶ Id. at 50.

⁷ Id.

⁸ Id.

⁹ Id.

¹⁰ Id.

¹¹ Id.

¹² Id. at 51.

¹³ Id.

¹⁴ Id.

sachet allegedly containing marijuana weighed 1.4 grams.¹⁵

A Receipt of Evidence was prepared. P/Insp. Javier asked the Hospital Administrator of the James L. Gordon Memorial Hospital to conduct a physical examination on Lescano. He also asked the Philippine National Police Crime Laboratory to examine Lescano's urine and the contents of the sachet seized during the buy-bust operation.¹⁶ PO3 Javier and PO1 Mataverde also executed a Joint Affidavit of Apprehension.¹⁷

Testifying during trial, PO3 Javier positively identified the drug specimen.¹⁸ The Philippine National Police Crime Laboratory also issued a report on Lescano's urine stating that dangerous drugs were present in Lescano's system.¹⁹ The laboratory examination on the sachet also yielded a positive result for marijuana.²⁰

Lescano was then charged for violating Section 5 of the Comprehensive Dangerous Drugs Act of 2002.

Upon arraignment, Lescano entered a plea of not guilty. Thereafter, trial ensued.²¹

The prosecution presented the following pieces of evidence to support its allegations: (1) the testimony of PO3 Javier; (2) the corroborative testimony of SPO1 Allan Delos Reyes; (3) Letter Request for Laboratory Examination; (4) Letter Request for Drug Test; (5) Chemistry Report No. DT-080-2008-OCCLO; (6) the sachet allegedly seized from Lescano; (7) the Joint Affidavit of PO3 Javier and PO1 Mataverde; (8) the Coordination Form; (9) the PDEA Certification of Coordination; (10) the Receipt of Evidence; (11) photographs of the marijuana; and (12) the ₱100.00 bill with serial number CM283073 marked with the initials "HJ."²²

In his testimony, Lescano denied that he was selling marijuana. He claimed that on July 8, 2008, at around 5:00 p.m., he was at Tulio Street just sitting and passing time when P/Insp. Julius Javier arrived and introduced himself as a police officer. P/Insp. Javier then frisked Lescano but the search turned out futile as nothing was recovered from him. Other police officers arrived. PO1 Mataverde and PO3 Javier then told him that something was confiscated during the frisking. Lescano insisted that there

¹⁵ Id. at 51–52.

¹⁶ Id.

¹⁷ Id. at 53

¹⁸ Id.

¹⁹ Id. at 51–52.

²⁰ Id.

²¹ Id. at 49.

²² Id. at 53–54.

was nothing confiscated from him. The officers, however, replied by stating: “Don’t worry, tomorrow there will be.”²³ He was then charged with illegal sale of prohibited drugs.²⁴

In support of Lescano’s testimony, the defense also presented the testimony of Rogelio Jacobo (Jacobo), Lescano’s neighbor. According to Jacobo, he was waiting for his niece at a nearby store along Tulio Street, about six (6) to seven (7) meters away from where Lescano was standing when he saw the latter being accosted by a police officer. Jacobo then approached them and asked what the problem was. The officer replied by saying: “*Baka pati ikaw isama namin.*” Jacobo then informed the relatives of Lescano that he had been arrested.²⁵

In the Decision²⁶ dated September 30, 2011, the Regional Trial Court found Lescano guilty beyond reasonable doubt of illegal sale of prohibited drugs. Lescano was sentenced to suffer the penalty of life imprisonment and to pay a fine of ₱500,000.00. The dispositive portion of the trial court Decision reads:

WHEREFORE, the Court finds the accused **HOWARD LESCANO Y CARREON GUILTY** beyond reasonable doubt of violation of Section 5, RA 9165 and hereby sentences him to suffer the penalty of ***life imprisonment*** and to pay a fine of ***₱500,000.00 plus costs***, and to suffer the accessory penalties under Section 35 thereof.

The accused being under detention shall be credited in the service of his sentence with the full time during which he has undergone preventive imprisonment subject to the conditions imposed under Article 29 of the Revised Penal Code, as amended.

The one (1) heat-sealed transparent plastic sachet of marijuana fruiting tops weighing 1.4 grams is forfeited in favor of the government and to be disposed of in accordance with law.

SO DECIDED.²⁷

In the Decision²⁸ dated November 13, 2013, the Court of Appeals affirmed the ruling of the trial court. In the Resolution dated September 18, 2014, the Court of Appeals denied Lescano’s Motion for Reconsideration.

Hence, this appeal was filed.

²³ Id.

²⁴ Id.

²⁵ Id at 54–55.

²⁶ Id. at 64–74. The Decision was penned by Judge Raymond C. Viray.

²⁷ Id at 74.

²⁸ Id. at 48–61. The Decision was penned by Associate Justice Agnes Reyes-Carpio and concurred in by Associate Justices Rosalinda Asuncion-Vicente and Priscilla J. Baltazar-Padilla.

For resolution is the issue of whether petitioner Howard Lescano'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.

I

The elements that must be established to sustain convictions for illegal sale of dangerous drugs are settled:

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.²⁹

As regards *corpus delicti*, Section 21 of the Comprehensive Dangerous Drugs Act of 2002, as amended by Republic Act No. 10640 stipulates requirements 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

²⁹ *People v. Morales*, 630 Phil. 215, 228 (2010) [Per J. Del Castillo, Second Division], citing *People v. Darisan et al.*, 597 Phil. 479, 485 (2009) [Per J. Corona, First Division] and *People v. Partoza*, 605 Phil. 883, 890 (2009) [Per J. Tinga, Second Division].

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)

Compliance with Section 21's requirements is critical. "Non-compliance is tantamount to failure in establishing identity of *corpus delicti*, an essential element of the offenses of illegal sale and illegal possession of dangerous drugs. By failing to establish an element of these offenses, non-compliance will, thus, engender the acquittal of an accused."³⁰

We reiterate our extensive discussion on this matter in *People v. Holgado*:³¹

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*." It "produce[s] doubts as to the origins of the [seized paraphernalia]."

The significance of ensuring the integrity of drugs and drug paraphernalia in prosecutions under Republic Act No. 9165 is discussed in

³⁰ *People of the Philippines v. Garry Dela Cruz y De Guzman*, G.R. No. 205821, October 1, 2014 <<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2014/october2014/205821.pdf>> [Per J. Leonen, Second Division].

³¹ G.R. No. 207992, August 11, 2014, 732 SCRA 554 [Per J. Leonen, Third Division].

People v. Belocura:

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.

In *Malilin v. People*, 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.

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*:

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*.

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." 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*, 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."

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*, 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.”

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.³² (Emphases in the original)

II

As regards the items seized and subjected to marking, Section 21(1) of the Comprehensive Dangerous Drugs Act, as amended, requires the performance of two (2) actions: physical inventory and photographing. Section 21(1) is specific as to when and where these actions must be done. As to when, it must be “immediately after seizure and confiscation.” As to where, it depends on whether the seizure was supported by a search warrant. If a search warrant was served, the physical inventory and photographing must be done at the exact same place that the search warrant is served. In case of warrantless seizures, these actions must be done “at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable.”

Moreover, Section 21(1) requires at least three (3) persons to be present during the physical inventory and photographing. These persons are: first, the accused or the person/s from whom the items were seized;

³² Id. at 567–573, citing *People v. Morales*, 630 Phil. 215, 228 (2010) [Per J. Del Castillo, Second Division]; *People v. Laxa*, 414 Phil. 156, 170 (2001) [Per J. Mendoza, Second Division], as cited in *People v. Ortega*, 555 Phil. 700, 708 (2007) [Per J. Tinga, Second Division]; *People v. Belocura*, G.R. No. 173474, August 29, 2012, 693 SCRA 476, 495–496 [Per J. Bersamin, First Division]; *Malilin v. People*, 576 Phil. 576, 588–589 (2008) [Per J. Tinga, Second Division]; *People v. Lorenzo*, 633 Phil. 393, 403 (2010) [Per J. Perez, Second Division]; *People v. Navarrete*, 665 Phil. 738, 748 (2011) [Per J. Carpio-Morales, Third Division]; *People v. Magat*, 588 Phil. 395, 405 (2008) [Per J. Tinga, Second Division]; and *People v. Nandi*, 639 Phil. 134, 144–145 (2010) [Per J. Mendoza, Second Division]. See also *People v. Ulat*, 674 Phil. 484 (2011) [Per J. Leonardo-De Castro, First Division]; and *People v. Zaida Kamad*, 624 Phil. 289 (2010) [Per J. Brion, Second Division].

second, an elected public official; and third, a representative of the National Prosecution Service. There are, however, alternatives to the first and the third. As to the first (i.e., the accused or the person/s from whom items were seized), there are two (2) alternatives: first, his or her representative; and second, his or her counsel. As to the representative of the National Prosecution Service, a representative of the media may be present in his or her place.

Section 21 spells out matters that are imperative. “Even the doing of acts which ostensibly approximate compliance but do not *actually* comply with the requirements of Section 21 does not suffice.”³³ This is especially so when the prosecution claims that the seizure of drugs and drug paraphernalia is the result of carefully planned operations, as is the case here.

*People v. Garcia*³⁴ underscored that the mere marking of seized paraphernalia, unsupported by a physical inventory and taking of photographs, and in the absence of the persons required by Section 21 to be present, does not suffice:

Thus, other than the markings made by PO1 Garcia and the police investigator (whose identity was not disclosed), no physical inventory was ever made, and no photograph of the seized items was taken under the circumstances required by R.A. No. 9165 and its implementing rules. We observe that while there was testimony with respect to the marking of the seized items at the police station, no mention whatsoever was made on whether the marking had been done in the presence of Ruiz or his representatives. There was likewise no mention that any representative from the media and the Department of Justice, or any elected official had been present during this inventory, or that any of these people had been required to sign the copies of the inventory.³⁵ (Citations omitted)

III

The flaws noted in *Garcia* are precisely the same errors that taint the integrity of the operations of the buy-bust team and, ultimately, of the *corpus delicti* of the offense allegedly committed by petitioner.

It is glaring that despite the prosecution’s allegations that a buy-bust operation was carefully planned and carried out, it admitted that Section 21(1) of the Comprehensive Dangerous Drugs Act was not faithfully complied with. While an inventory was supposed to have been conducted, this was done neither in the presence of petitioner, the person from whom the drugs were supposedly seized, nor in the presence of his counsel or

³³ *People v. Holgado*, G.R. No. 207992, August 11, 2014 <<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2014/august2014/207992.pdf>> [Per J. Leonen, Third Division].

³⁴ 599 Phil. 416 (2009) [Per J. Brion, Second Division].

³⁵ Id. at 429.

representative. Likewise, not one of the persons required to be present (an elected public official, and a representative of the National Prosecution Service or the media) was shown to have been around during the inventory and photographing.

We are, in effect, left with no other assurance of the integrity of the seized item other than the self-serving claims of the prosecution and of its witnesses. These claims cannot sustain a conviction. As in *Garcia*, the mere marking of seized items, done in violation of the safeguards of the Comprehensive Dangerous Drugs Act, cannot be the basis of a finding of guilt.

The Court of Appeals made much of the presumption of regularity in the performance of official functions. It intimated that this presumption trumped the presumption of innocence of an accused in light of how “all the evidence [supposedly] points to the conclusion that [petitioner] sold the marijuana.”³⁶ This is a serious error. Again, as we stated in *Holgado*:

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.” [The Comprehensive Dangerous Drugs Act] requires compliance with Section 21.³⁷

Section 21(1) of the Comprehensive Dangerous Drugs Act, as amended, leaves room for deviating from its own requirements. It includes a proviso stating 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 failed to establish the existence of any such justifiable grounds. If at all, its own claims that the buy-bust operation was carefully conceived of and carried out make its position even more dubious. These claims are all the more reason to expect that Section 21(1) shall be complied with meticulously. Again, our observations in *Holgado* are on point:

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

³⁶ *Rollo*, p. 59.

³⁷ *People v. Holgado*, G.R. No. 207992, August 11, 2014, 732 SCRA 554 [Per J. Leonen, Third Division].

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.

IV

As this court has also previously observed in decisions involving analogous circumstances, “[t]he minuscule amount of narcotics supposedly seized . . . amplifies the doubts on their integrity.”³⁸ What is involved here is all but a single sachet of 1.4 grams of plant material alleged to have been marijuana.

In *People v. Dela Cruz*,³⁹ we noted that the seizure of seven (7) sachets supposedly containing 0.1405 gram of shabu (a quantity which, we emphasized, was “so minuscule it amount[ed] to little more than 7% of the weight of a five-centavo coin . . . or a one-centavo coin”) lent itself to dubiety.

In *Holgado*:

While the minuscule 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*, 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.”

....

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 minuscule amounts of drugs. These can be readily planted and tampered[.]⁴⁰ (Citations omitted)

³⁸ *People of the Philippines v. Garry Dela Cruz y De Guzman*, G.R. No. 205821, October 1, 2014 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2014/october2014/205821.pdf>. [Per J. Leonen, Second Division].

³⁹ *Id.*

⁴⁰ G.R. No. 207992, August 11, 2014, 732 SCRA 554, 576–577 [Per J. Leonen, Third Division].

With the integrity of the *corpus delicti* of the crime for which petitioner was charged is cast in doubt, it follows that there is no basis for finding him guilty beyond reasonable doubt. Petitioner must be acquitted.

We echo the same words with which we ended *Holgado*:

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 minuscule 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.⁴¹

WHEREFORE, premises considered, the Decision dated November 13, 2013 and Resolution dated September 18, 2014 of the Court of Appeals in CA-G.R. CR-HC No. 05391 are **REVERSED and SET ASIDE**. Petitioner Howard Lescano y Carreon is hereby **ACQUITTED** for failure of the prosecution to prove his guilt beyond reasonable doubt. He is ordered immediately **RELEASED** from detention, unless he is 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.

SO ORDERED.



MARVIC M.V.F. LEONEN
Associate Justice

⁴¹ G.R. No. 207992, August 11, 2014, 732 SCRA 554, 577 [Per J. Leonen, Third Division]

WE CONCUR:



ANTONIO T. CARPIO

Associate Justice

Chairperson



ARTURO D. BRION

Associate Justice



MARIANO C. DEL CASTILLO

Associate Justice



JOSE CATRAL MENDOZA

Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



ANTONIO T. CARPIO

Associate Justice

Chairperson, Second Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



MARIA LOURDES P. A. SERENO

Chief Justice