

SECOND DIVISION

[G.R. No. 214490, January 13, 2016]

**HOWARD LESCANO Y CARREON @ "TISOY", PETITIONER, VS.
PEOPLE OF THE PHILIPPINES, RESPONDENT.**

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 miniscule 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 5^[2] of Republic Act No. 9165, otherwise 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] P100.00 . . . 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]

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 PI00.00 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 PI 00 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 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 SPOL Allan Delos Reyes; (3) Letter Request for Laboratory Examination; (4) Letter Request for Drug Test; (5) Chemistry Report No. DT-080-2008-OCCLLO; (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 P100.00 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 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 Decision^[26] 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 P500,000.00. 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 **P500,000.00 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 Decision^[28] 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.

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 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]."