



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated **December 9, 2020** which reads as follows:*

“G.R. No. 240425 (*People of the Philippines v. Mark Maturan*). – For our review is the Decision¹ dated April 18, 2018 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 02240 affirming the conviction of accused-appellant Mark Maturan for violation of Sections 5² and 12,³ Article II of Republic Act No. (R.A.) 9165, otherwise known as the “Comprehensive Dangerous Drugs Act of 2002.” Accused-appellant was found guilty of: (1) the crime of illegal sale of 0.07 gram of methamphetamine hydrochloride and was sentenced to a penalty of life imprisonment and to pay a fine of ₱500,000.00; and (2) the crime of illegal possession of drug paraphernalia and was sentenced to a penalty of six (6) months and one (1) day, as minimum, to two (2) years and seven (7) months, as maximum and to pay a fine of ₱10,000.00.

Facts of the Case

Accused-appellant was charged with violation of Sections 5 and 12, Article II of R.A. 9165, in two (2) separate Informations, which read:

CRIMINAL CASE NO. 12-04-3733

That on or about the 23rd day of April 2012 in the City of Maasin, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, not being authorized by law, did,

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¹ Penned by Associate Justice Pamela Ann Abella Maxino, with the concurrence of Associate Justices Geraldine C. Fiel-Macaraig and Louis P. Acosta; *rollo*, pp. 4-19.

² Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals.

³ Illegal Possession of Drug Paraphernalia.

then and there, willfully, unlawfully and feloniously sell, trade and distribute two (2) pieces heat-sealed transparent plastic sachet containing methamphetamine hydrochloride known as *shabu*, with a total weight of 0.07 grams, a dangerous drug.

CONTRARY TO LAW.⁴

CRIMINAL CASE NO. 12-04-3734

That on or about the 23rd day of April 2012, in the City of Maasin, Philippines and within the jurisdiction of this honorable court, the above-named accused, not being authorized by law, did, then and there, willfully, unlawfully and feloniously have in his possession, custody and control, drug paraphernalias, to wit: one piece improvised wooden sealer, one (1) piece small medical scissor, six pieces improvised tooters, one (1) piece disposable lighter used in lighting and sniffing *shabu*, instruments, apparatus, and other paraphernalia for the use of dangerous drugs.

CONTRARY TO LAW.⁵

When arraigned, accused-appellant entered a plea of not guilty to the two charges.⁶ Upon motion by the prosecution, and considering that the two above-entitled cases arose from the same incident and involve the same accused, the preliminary conference, pre-trial and trial of the cases were consolidated.⁷

Version of the Prosecution

The prosecution presented nine (9) witnesses who testified to the following:

In the evening of April 22, 2012, Intelligence Officer 1 Cornelio Espartero, Jr. (IO1 Espartero) of the Philippine Drug Enforcement Agency (PDEA) Regional Office 8 received information that accused-appellant Mark Maturan alias "Kram" was engaged in selling *shabu* at Barangay Abgao, Maasin City, Southern Leyte. The following day, IO1 Espartero conducted a briefing with several

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⁴ Records (Crim. Case No. 12-04-3733), p. 1.

⁵ Records (Crim. Case No. 12-04-3734), p. 1.

⁶ Records (Crim. Case No. 12-04-3733) p. 39; Records (Crim. Case No. 12-04-3734), p. 39.

⁷ Id. at 93.

elements of PDEA for a buy-bust operation against accused-appellant.⁸ IO1 Neil T. Waniwan (IO1 Waniwan) was designated as *poseur*-buyer and evidence custodian⁹ while IO1 Manuel Zabate (IO1 Zabate) and IO1 Rosalie Farrofo (IO1 Farrofo) were designated as the arresting officers while the rest of the team act as the perimeter team.¹⁰ In the afternoon of April 23, 2012, after the necessary pre-operation documents were prepared, the team met their confidential informant who informed them that the place of the transaction would be at the residence of accused-appellant at Barangay Abgao. During the final briefing, IO1 Espartero handed IO1 Waniwan two (2) ₱500.00 bills, as marked buy-bust money.¹¹

That evening of April 23, 2012, the PDEA members designated as back-up and support group, together with IO1 Espartero, immediately went to the residence of the accused-appellant, and strategically positioned themselves. IO1 Waniwan, together with the confidential informant, also proceeded to accused-appellant's house on board a motorcycle to Barangay Abgao.¹²

Upon reaching the corner of Tomas Oppus Street and San Vicente Street in Barangay Abgao, IO1 Waniwan and the confidential informant parked their motorcycle and entered a narrow alley on foot. Upon arriving at the house of accused-appellant, the confidential informant immediately knocked on the door. A few moments later, accused-appellant came out from the house. The confidential agent then introduced IO1 Waniwan to accused-appellant as a buyer. Accused-appellant informed the pair to wait for him as he was going to get something inside, and then retreated to his house.¹³

Thereafter, accused-appellant emerged from his house and faced the pair. The confidential informant then confided to accused-appellant that IO1 Waniwan was interested in buying ₱1,000.00 worth of *shabu*. IO1 Waniwan then handed the marked money to accused-appellant who pocketed it, and then took out two heat-sealed plastic sachets containing white crystalline substance, and handed them to IO1 Waniwan.¹⁴

After the exchange, IO1 Waniwan surreptitiously dialed IO1 Espartero's mobile, while the confidential informant engaged

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⁸ Id. at 94.

⁹ Id. at 96.

¹⁰ Id. at 100.

¹¹ Id. at 94-95.

¹² Id. at 96.

¹³ Id. at 96-97.

¹⁴ Id.

accused-appellant in small talk. Seconds later, the PDEA team rushed towards where the three were standing, introduced themselves as PDEA agents and arrested accused-appellant. An incidental search was then conducted by IO1 Waniwan on accused-appellant's person, which yielded the recovery of the buy-bust money from his right pocket. IO1 Waniwan found a mobile phone, a pouch containing a pair of scissors, a modified lighter, a wooden sealer and strips of tin foil inside his left pocket.¹⁵

IO1 Waniwan then immediately marked the seized heat-sealed sachets with his initials "NTW" and "NTW-1." Upon the instruction of IO1 Espartero, Jr., the team proceeded to the Maasin City Police Station for the conduct of the inventory. IO1 Waniwan carried the confiscated drugs and non-drug items on the way to the police station.¹⁶

At the Maasin City Police Station, IO1 Waniwan prepared the inventory of the items seized, in the presence of accused-appellant, members of the Maasin City Police Station, Ramon A. Buyser as media representative, Josephine Hatayna as Department of Justice (DOJ) representative and Rico Ramos Serito as elected public official. He marked the non-drug items and wrote entries in the Certificate of Inventory¹⁷ which was signed by him and the personalities mentioned. Photographs of the post-seizure proceedings were also taken.¹⁸ The confiscated drug paraphernalia were marked and dated by IO1 Waniwan and kept them in his possession as their custodian.¹⁹

Thereafter, the heat-sealed plastic sachets, along with the corresponding letter request for their examination, were brought by IO1 Waniwan to the PNP Crime Laboratory in Maasin City, which was duly received by Police Inspector (PINSP) Robbie Charles Villagen (PINSP Villagen), who then conducted a qualitative examination thereon.²⁰

On April 24, 2012, PINSP Villagen of the local crime laboratory issued Chemistry Report No. D-12-2-12,²¹ finding that the two delivered heat-sealed sachets marked "NTW" and "NTW-1," with an aggregate weight of 0.07 gram, positive for the presence of methamphetamine hydrochloride, a dangerous drug.²²

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¹⁵ Id. at 97.

¹⁶ Id. at 97-98.

¹⁷ Records (Crim. Case No. 12-04-3734), p. 31.

¹⁸ Id. at 98-99.

¹⁹ TSN dated April 16, 2016, p. 35.

²⁰ Records (Crim. Case No. 12-04-3733), p. 98.

²¹ Records (Crim. Case No. 12-04-374), p. 22.

²² Id.

On April 25, 2012, the Office of the City Prosecutor of Maasin City filed two (2) separate Informations against accused-appellant Mark Maturan charging him with violation of Sections 5 and Section 12, Article II of R.A. 9165.²³

Version of the Defense

To refute the evidence presented by the prosecution, the defense presented two witnesses, namely accused-appellant himself and his son Mark Ryan Maturan.²⁴

Accused-appellant testified that in the evening of April 23, 2012, he was inside his house watching television at his residence in Barangay Abgao, Maasin City, when several PDEA agents suddenly barged inside, and ordered him not to move. Photographs were taken inside his room and he was immediately handcuffed and taken outside where he saw his son, Mark Ryan and one Alian Jeffrey. He was then brought inside a van and transported to the Maasin Police Station. He narrated that when he arrived at the police station, he saw the plastic sachets and drug paraphernalia laid on top of the table. Accused-appellant insisted that the dangerous drugs and drug paraphernalia were not recovered from him, but came from the pocket of the arresting PDEA agents.²⁵

Mark Ryan Maturan, the minor son of accused-appellant narrated that during the incident, he was playing outside their house playing with a friend while his father was inside taking a rest when a white van arrived. The passengers of the white van, who wore white shirts and short pants, alighted therefrom, went inside their house and came out escorting his father who was already handcuffed. He then drew near his father who was crying and calling his name.²⁶

Ruling of the Regional Trial Court

After trial, the Regional Trial Court (RTC) rendered a Decision²⁷ dated December 1, 2015, convicting accused-appellant of the charge of illegal sale of dangerous drugs, and illegal possession of drug paraphernalia. The *fallo* of said decision reads:

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²³ Records (Crim. Case No. 12-04-3733), p. 1; Records (Crim. Case No. 12-04-3734), p. 1.

²⁴ Id. at 110.

²⁵ Id. at 110-111.

²⁶ Id. at 111-112.

²⁷ Penned by Judge Ma. Daisy Paler Gonzalez; id. at 92-124.

WHEREFORE, premises considered, the court finds the accused Mark Maturan GUILTY beyond reasonable doubt of violation of Section 5 and Section 12, Article II of RA 9165 (Comprehensive Dangerous Drugs Act of 2002), and hereby sentences him as follows:

- a) in Criminal Case No. 12-04-3733 (Violation of Section 5, Article II, of RA (9165) accused is sentenced to suffer the indivisible penalty of LIFE IMPRISONMENT and to pay a fine of Five Hundred Thousand Pesos (Php500,000.00); and
- b) in Criminal Case No. 12-04-3734 (Violation of Section 12, Article II, RA 9165) accused is sentenced to suffer imprisonment from Six (6) months and one (1) day to two (2) years and to pay a fine of Ten Thousand Pesos (Php 10,000.00).

The dangerous drugs, as well as, the drug paraphernalia subject matter of the two (2) instant cases are hereby ordered confiscated and forfeited in favor of the government pursuant to Sec. 20, RA 9165, to be disposed in accordance with the provisions of Section 21 of the same Act.

SO ORDERED.²⁸

Accused-appellant appealed his conviction to the Court of Appeals.

On April 18, 2018, the CA issued the herein assailed Decision²⁹ affirming with modification the decision of the RTC convicting appellant of the charges. The dispositive portion of the decision states wit:

IN LIGHT OF ALL THE FOREGOING, the assailed Decision dated December 1, 2015, of the Regional Trial Court, Branch 25, Maasin City, in Criminal Cases (sic) Nos. 12-04-3733 and 12-04-3734, is AFFIRMED with MODIFICATIONS.

In Criminal Case No. 12-04-3733, Accused-Appellant MARK MATURAN is found GUILTY of the crime of illegal sale of 0.07 gram of methylamphetamine hydrochloride and is sentenced to a penalty of life imprisonment and to pay fine of Five Hundred Thousand Pesos (Php 500,000.00).

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²⁸ Id. at 123-124.

²⁹ Supra note 1.

In Criminal Case No. 12-04-3734, accused-appellant MARK MATURAN is found GUILTY of the crime of illegal possession of drug paraphernalia and is sentenced to a penalty of six (6) months and one (1) day, as minimum, to two (2) years and seven (7) months, as maximum and to pay a fine of Ten Thousand Pesos (Php10,000.00).

SO ORDERED.³⁰

Hence, this appeal.³¹ In its Resolution³² dated August 15, 2018, the parties were required to simultaneously file their respective supplemental briefs if they so desire. The Office of the Solicitor General filed a Manifestation and Motion³³ adopting its Appellee's Brief³⁴ filed with the CA. Likewise, accused Maturan, in his Manifestation³⁵ dated November 16, 2018, manifested that it is adopting *in toto* and reiterates the contents and substance of the Appellant's Brief³⁶ filed with the CA.

Issue

The issue to be resolved in this appeal is whether the CA erred in affirming accused-appellant's conviction of violation of Sections 5 and 12, Article II of R.A. 9165.

Ruling of the Court

The appeal is meritorious.

To secure a conviction for illegal sale of dangerous drugs under Section 5, Article II of R.A. 9165, the prosecution must establish the following elements: (1) the identity of the buyer and the seller, the object, and the consideration; and (2) the delivery of the thing sold and the payment.³⁷ On the other hand, to properly secure the conviction of an accused charged with illegal possession of drug paraphernalia, the prosecution must show: (a) possession or control by the accused of any equipment, apparatus or other paraphernalia fit or intended for smoking, consuming, administering, injecting, ingesting, or introducing any dangerous drug into the body; and (b) such possession is not authorized by law.³⁸

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³⁰ *Rollo*, p. 19.

³¹ *Id.* at 20.

³² *Id.* at 26-27.

³³ *Id.* at 28-32.

³⁴ *CA rollo*, pp. 71-99.

³⁵ *Rollo*, pp 33-35.

³⁶ *CA rollo*, pp. 15-30.

³⁷ *People v. Hilario*, 823 Phil. 580, 594 (2018).

³⁸ *People v. Mariano*, 698 Phil 772, 785 (2012).

In all drug cases, it is essential that the identity of the prohibited drugs and/or drug paraphernalia be established beyond reasonable doubt, considering that the prohibited drug and/or drug paraphernalia form an integral part of the *corpus delicti* of the crime/s.³⁹ The prosecution has to show an unbroken chain of custody over the dangerous drugs and/or drug paraphernalia. Thus, in order to obviate any unnecessary doubts on the identity of the dangerous drugs and/or drug paraphernalia on account of switching, “planting,” or contamination of evidence, the prosecution must be able to account for each link of the chain from the moment of seizure up to presentation in court as evidence of the *corpus delicti*.⁴⁰

The buy-bust operation was conducted on April 23, 2012 or before the effectivity of R.A. 10640.⁴¹ Compliance with the chain of custody rules is crucial in any prosecution that follows such operation. “Chain of custody” means that the duly recorded authorized movements and custody of seized drugs or controlled chemicals from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction.⁴²

In this connection, Section 21, Article II of R.A. 9165, the applicable law at the time of the commission of the alleged crimes, lay down the procedure that police operatives must follow to maintain the integrity of the confiscated drugs used as evidence. The provision requires that: **(1) the seized items be inventoried and photographed immediately after seizure or confiscation; and (2) that the physical inventory must be done in the presence of: (a) the accused or his/her representative or counsel, (b) an elected public official, (c) a representative from the media, and (d) a representative from the DOJ, all of whom shall be required to sign the copies of the inventory and be given a copy thereof.** Section 21 of R.A. 9165 further requires the apprehending team to conduct a physical inventory of the seized items and the photographing of the same immediately after seizure and confiscation. This also means that the three required witnesses should already be physically present at the time of apprehension – a requirement that could easily be complied with by the buy-bust team

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³⁹ *People v. Lumaya*, 827 Phil. 473, 484 (2018).

⁴⁰ *Id.*

⁴¹ An Act to Further Strengthen the Anti-Drug Campaign of the Government, Amending for the Purpose Section 21 of Republic Act No. 9165, otherwise known as the “Comprehensive Dangerous Drugs Act of 2002.”

⁴² *People v. Moner*, 827 Phil. 42, 54 (2018).

considering that the buy-bust operation is, by its nature, a planned activity.⁴³ In this case, the buy-bust operation was planned one day ahead.

It is true that there are cases where the Court had ruled that the failure of the apprehending team to strictly comply with the procedure laid out in Section 21 of R.A. 9165 does not *ipso facto* render the seizure and custody over the items void and invalid. However, the prosecution still needs to satisfactorily prove that: (a) there is justifiable ground for non-compliance; and (b) the integrity and evidentiary value of the seized items are properly preserved. The Court has repeatedly emphasized that the prosecution should explain the reasons behind the procedural lapses.

In *People v. Holgado*,⁴⁴ this Court explained the four 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.⁴⁵ In the present case, the buy-bust team failed to comply with the prescribed procedure for the conduct of the seizure, initial custody, and handling of the seized drug which created doubt as to the identity and integrity of the drugs. The first link in the chain of custody has already been broken. None of the required witnesses were present at the time of seizure and apprehension. The three witnesses were only called to witness the inventory and photographing of the alleged seized plastic sachets and the other paraphernalia at the Maasin Police Station, and not at the place of seizure and apprehension.

In *People v. Borromeo*,⁴⁶ the Court emphasized that the presence of the witnesses from the DOJ or the media, and from the public elective office at the time of apprehension is mandatory. The insulating presence of these witnesses during the seizure and marking of the dangerous drugs will prevent the evils of switching, planting or contamination of the *corpus delicti*.⁴⁷ Their presence at

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⁴³ *People v. Musor*, G.R. No. 231843, November 7, 2018.

⁴⁴ *People v. Holgado*, 741 Phil. 78, 94-95 (2014), citing the case of *People v. Nandi*, 639 Phil. 134 (2010).

⁴⁵ *Id.*

⁴⁶ G.R. No. 245251, December 5, 2019, citing *People v. Escara*, G.R. No. 212170, June 19, 2019.

⁴⁷ *Id.*

the time of seizure and confiscation would belie any doubt as to the source, identity and integrity of the seized drug.

In the case of *People v. Tomawis*,⁴⁸ the Court explained that the presence of these witnesses is crucial in safeguarding the integrity and credibility of the seizure and confiscation of the evidence. To quote:

The presence of the three witnesses must be secured not only during the inventory but more importantly at the time of the warrantless arrest. It is at this point in which the presence of the three witnesses is most needed, as it is their presence at the time of seizure and confiscation that would belie any doubt as to the source, identity and integrity of the seized drug. If the buy-bust operation is legitimately conducted, the presence of the insulating witnesses would also controvert the usual defense of frame-up as the witnesses would be able to testify that the buy-bust operation and inventory of the seized drugs were done in their presence in accordance with Section 21 of RA 9165.⁴⁹ (Emphasis supplied)

To emphasize, the presence of the three witnesses at the time of seizure and confiscation of the drugs must be secured and complied with at the time of the warrantless arrest; such that they are required to be at or near the intended place of the arrest so that they can be ready to witness the inventory and photographing of the seized items and confiscated drugs “immediately after seizure and confiscation.”⁵⁰

The presence of the witnesses from the DOJ, media and from public elective office is necessary to protect against the possibility of planting, contamination, or loss of the seized drug and drug paraphernalia.⁵¹ The practice of police operatives of not bringing to the intended place of arrest the three witnesses, when they could easily do so – and “calling them in” to the place of inventory to witness the inventory and photographing of the drugs only after the buy-bust operation has already been finished – does not achieve the purpose of the law in having these witnesses prevent or insulate against the planting of drugs. This is especially true in cases where the quantity of the seized drugs is miniscule, such as in the present

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⁴⁸ 830 Phil. 385 (2018)

⁴⁹ Id. at 409.

⁵⁰ *People v. Narvas*, G.R. No. 241254, July 8, 2019.

⁵¹ Id.

case, since it is highly susceptible to planting, tampering, or alteration of evidence.⁵² Law enforcers should not trifle with the legal requirement to ensure integrity in the chain of custody of seized dangerous drugs and drug paraphernalia, especially when only a miniscule amount of dangerous drugs is alleged to have been taken from the accused.⁵³ Here, the dangerous drug supposedly seized from accused amount to **0.07** grams. This quantity is so miniscule and can be readily planted and tampered. 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. Here, based on the testimony of POI Waniwan, not one of the witnesses required under Section 21 was present at the time the plastic sachets and the other items were seized from accused-appellant, to ensure that there was no planting of tampering of the seized items. The three witnesses were present only during the inventory of the seized items but were not present during the seizure and confiscation of such items. There was also no explanation as to their absence during the apprehension and their belated appearance at the police station. It has also not been shown the buy-bust team exerted genuine efforts to secure the presence of the required witnesses during the seizure and apprehension.

Moreover, the inventory of the seized plastic sachets and the other paraphernalia were not made immediately after the seizure and confiscation thereof. The reason proffered by the prosecution in not conducting the inventory in the place of seizure, which was allegedly for the safety of the apprehending team is not a sufficient ground for non-compliance since it has not been shown that there was any threat to their security while they were at the place of transaction considering that there was only the appellant and their apprehending team was composed of several members. Moreover, the buy-bust team's justification for the conduct of the inventory at the Maasin City Police Station which is for the convenience of the required witnesses would defeat the purpose for which the law specifically requires their presence from the very beginning which is at the time of arrest and confiscation of the seized items.

In a long line of cases, the Court clarified that the phrase "immediately after seizure and confiscation" means that the physical inventory and photographing of the drugs were intended by law to be made immediately after, or at the place of apprehension. It is only when the same is not practicable that the Implementing Rules and

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⁵² *People v. Lim*, G.R. No. 231989, September 4, 2018.

⁵³ *Supra* note 44.

Regulations (IRR) of R.A. 9165 allows the inventory and photographing to be done as soon as the buy-bust team reaches the nearest police station or the nearest office of the apprehending officer/team. In this case, we find that the saving clause is not applicable since the prosecution failed to satisfactorily explain the reasons behind its failure to comply with the required procedure, thus, giving doubt to the integrity and evidentiary value of the seized evidence.

In the case of *People v. Musor*,⁵⁴ the Court held that while the IRR allows alternative places for the conduct of inventory and photographing of the seized drugs, the requirement of having the three required witnesses to be physically present at the time or near the place of apprehension is not dispensed with. The reason is simple: it is the time of arrest – or at the time of the drugs “seizure and confiscation” – that the presence of the three witnesses is most needed, as it is their presence at the time of seizure and confiscation that would insulate against the police practice of planting evidence.

Moreover, We observed that one of the witnesses, Rico Ramos Serito, a barangay councilor of Abgao who was present during the inventory testified that he had no personal knowledge of where the items were seized from nor was he present during the operation. Furthermore, Ramon Buysar, the media representative stated during cross examination that the inventory was conducted at the lobby of the second floor of Southern Pension House and was certain that no inventory was conducted at the Maasin City Police Station.

All these circumstances taken together create serious and reasonable doubt as to the identity and integrity of the drugs and shows that the buy-bust team committed serious and patent procedural lapses in the conduct of the seizure, initial custody and handling of the seized drug. Hence, acquittal of accused-appellant is in order since his guilt of the crimes charged has not proven with beyond reasonable doubt.

WHEREFORE, the appeal is **GRANTED**. The Decision dated April 18, 2018 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 02240 is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant Mark Maturan is **ACQUITTED** of the crimes charged against him. The Director of the Bureau of Corrections is **ORDERED** to cause his **IMMEDIATE RELEASE**, unless he is being lawfully held in custody for any other reason. Let an entry of final judgment be issued immediately.

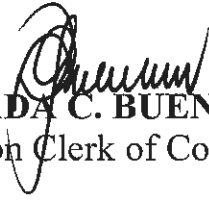
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⁵⁴ Supra note 43.

SO ORDERED.”

By authority of the Court:



LIBRADA C. BUENA
Division Clerk of Court *for all*

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court
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