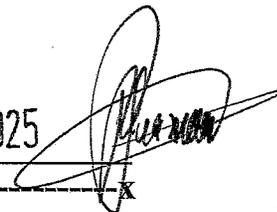


SECOND DIVISION

G.R. No. 265434 – PEOPLE OF THE PHILIPPINES, Plaintiff-appellee,
v. EDGARDO BERNARDINO y TAMAYO a.k.a “TOTONG,” Accused-
appellant.

Promulgated:

MAR 03 2025



x

SEPARATE CONCURRING OPINION

LEONEN, J.:

Edgardo Bernardino alias “Totong” (Bernardino) was charged with violating Sections 5 and 15 of Republic Act No. 9165 or the Comprehensive Dangerous Drugs Act of 2002 after selling 678.45 grams of dried marijuana leaves during a buy-bust operation. A confirmatory test done on Bernardino’s urine also yielded positive results for marijuana and delta-9-tetrahydrocannabinol (THC) metabolites.¹

Under the strict wording of Republic Act No. 9165, the plant *Cannabis sativa L.*, in all its forms, kinds, and categories, are illegal.² This prohibition does not distinguish between the kind, class, or character of cannabis involved. It is also broad enough to include naturally occurring compounds derived from cannabis called cannabinoids, such as THC, the principal psychoactive compound of cannabis.³

Thus, the *ponencia* is correct in finding Bernardino guilty of illegal sale and illegal use of dangerous drugs, as the black and white letter of Republic Act No. 9165 prohibits cannabis indiscriminately.

However, the same law also states that there must be a “balance in the national drug control program so that people with legitimate medical needs are not prevented from being treated with adequate amounts of appropriate medications, *which include the use of dangerous drugs.*”⁴

¹ *Rollo*, pp. 9–11.

² Republic Act No. 9165 (2002), sec. 3(v).

³ Nephi Stella, *THC and CBD: Similarities and differences between siblings*, 111 NEURON 302 (2023), available at [https://www.cell.com/neuron/pdf/S0896-6273\(22\)01119-9.pdf](https://www.cell.com/neuron/pdf/S0896-6273(22)01119-9.pdf) (last accessed on March 18, 2025).

⁴ Republic Act No. 9165 (2002), sec. 2.



This provision becomes contentious when applied to cannabis. While cannabis is listed as a Schedule I drug under our laws,⁵ a classification reserved for drugs with “high abuse potential [and] no accepted medical use[.]”⁶ new research suggests a high likelihood that certain cannabinoids from the plant may be used to treat various illnesses.⁷

The *Cannabis sativa L.* plant synthesizes more than a hundred cannabinoids, which can be individually extracted. The most prevalent cannabinoids are THC and cannabidiol (CBD). The two differ greatly in the way they produce an effect in the body, as well as their overall effects on brain functions.⁸

THC is the principal psychoactive compound in cannabis. When introduced to the body, it “trigger[s] a rapid succession of symptoms, starting with numbness and tingling of the extremities, light-headedness, ‘floating’ feelings, and loss of concentration, followed by euphoria, palpitation, sweating, tremulousness and weakness that lasts several hours.”⁹

As THC can modulate multiple biological pathways, there is conclusive evidence that it can be used for treating multiple sclerosis, as well as managing chronic pain and chemotherapy-induced nausea and vomiting.¹⁰ It also shows promise in the treatment of sleep disorders, seizures, Huntington’s disease,¹¹ anxiety, and posttraumatic stress disorder.¹²

However, medicinal THC use is still highly debatable as it is shown to cause physical and cognitive impairments, such as difficulty in paying attention, mental confusion, loss of sense of time, and trouble in controlling motor functions.¹³ Chronic consumption of large amounts of THC has also been associated with an increase in the incidence of mental health disorders, such as the cannabis use disorder, characterized by “impaired memory

⁵ Republic Act No. 9165 (2002), Annex, List of Drugs Included in Schedule I.

⁶ MICHAEL LOPEZ ET AL., DRUG ENFORCEMENT ADMINISTRATION DRUG SCHEDULING (2022) available at <https://www.ncbi.nlm.nih.gov/books/NBK557426/>.

⁷ Julie Moltke & Chandni Hindocha, *Reasons for cannabidiol use: a cross-sectional study of CBD users, focusing on self-perceived stress, anxiety, and sleep problems*, 3 JOURNAL OF CANNABIS RESEARCH 5 (2021), available at <https://j cannabisresearch.biomedcentral.com/articles/10.1186/s42238-021-00061-5> (last accessed on March 18, 2025).

⁸ Nephi Stella, *THC and CBD: Similarities and differences between siblings*, 111 NEURON 302 (2023), available at [https://www.cell.com/neuron/pdf/S0896-6273\(22\)01119-9.pdf](https://www.cell.com/neuron/pdf/S0896-6273(22)01119-9.pdf) (last accessed on March 18, 2025).

⁹ *Id.* at 307.

¹⁰ TERRENCE NG ET AL., TETRAHYDROCANNABINOL (THC) (2023), available at <https://www.ncbi.nlm.nih.gov/books/NBK563174/>.

¹¹ Nephi Stella, *THC and CBD: Similarities and differences between siblings*, 111 NEURON 302, 310 (2023), available at [https://www.cell.com/neuron/pdf/S0896-6273\(22\)01119-9.pdf](https://www.cell.com/neuron/pdf/S0896-6273(22)01119-9.pdf) (last accessed on March 18, 2025).

¹² THE NATIONAL ACADEMIES OF SCIENCES, ENGINEERING, AND MEDICINE, THE HEALTH EFFECTS OF CANNABIS AND CANNABINOIDS: THE CURRENT STATE OF EVIDENCE AND RECOMMENDATIONS FOR RESEARCH 123 (2017).

¹³ Nephi Stella, *THC and CBD: Similarities and differences between siblings*, 111 NEURON 302, 307 (2023), available at [https://www.cell.com/neuron/pdf/S0896-6273\(22\)01119-9.pdf](https://www.cell.com/neuron/pdf/S0896-6273(22)01119-9.pdf) (last accessed on March 18, 2025).

processing, decision-making, school/work performance, and social functioning,” as well as psychosis and schizophrenia.¹⁴

Meanwhile, unlike THC, CBD is not considered psychoactive. It does not affect behavior and is shown to cause only mild and reversible somnolence or sleepiness, decrease in appetite, diarrhea, and fatigue. Even high doses of CBD does not produce THC-like effects. Evidence suggests that CBD mitigates the long-term side effects of THC consumption.¹⁵ The World Health Organization has also stated that CBD has currently no potential for abuse and dependency, with a good safety profile.¹⁶

Like THC, CBD also has analgesic properties, which makes it suitable for pain management, helping people with chronic pain and arthritis. CBD also has anti-seizure properties and may treat epilepsy. CBD is also shown to help with symptoms of mental health disorders and neurological conditions like autism spectrum disorder, Alzheimer’s disease, anxiety, depression, and posttraumatic stress disorder.¹⁷ Another potential use of CBD is in detoxification and treatment of drug abuse, specifically alcohol and opioid addiction.¹⁸

As CBD has many therapeutic applications without psychoactive side effects, it has since been classified as a novel food, gaining rapid popularity in parts of Europe, United Kingdom, and the United States, where it is sold in the form of oils, capsules, candies, and soft gummies, among others.¹⁹ Legalization of cannabis for medical and recreational use has also increased in other countries over the past decade as more benefits of the drug emerge through repeated clinical research.²⁰

The characteristics of cannabis allow for a different treatment for each of its derivatives, making it possible to ban some while legalizing other less harmful cannabinoids, such as CBD. In any case, “cannabis” is too broad a

¹⁴ *Id.* at 309.

¹⁵ *Id.* at 316.

¹⁶ Julie Moltke & Chandni Hindocha, *Reasons for cannabidiol use: a cross-sectional study of CBD users, focusing on self-perceived stress, anxiety, and sleep problems*, 3 JOURNAL OF CANNABIS RESEARCH 5 (2021), available at <https://j cannabisresearch.biomedcentral.com/articles/10.1186/s42238-021-00061-5> (last accessed on March 18, 2025).

¹⁷ *Id.*

¹⁸ Nephi Stella, *THC and CBD: Similarities and differences between siblings*, 111 NEURON 302, 315 (2023), available at [https://www.cell.com/neuron/pdf/S0896-6273\(22\)01119-9.pdf](https://www.cell.com/neuron/pdf/S0896-6273(22)01119-9.pdf) (last accessed on March 18, 2025).

¹⁹ Julie Moltke & Chandni Hindocha, *Reasons for cannabidiol use: a cross-sectional study of CBD users, focusing on self-perceived stress, anxiety, and sleep problems*, 3 JOURNAL OF CANNABIS RESEARCH 5(2021), available at <https://j cannabisresearch.biomedcentral.com/articles/10.1186/s42238-021-00061-5> (last accessed on March 18, 2025).

²⁰ Kyra N. Farrelly et al., *The Impact of Recreational Cannabis Legalization on Cannabis Use and Associated Outcomes: A Systematic Review*. 17 SUBSTANCE ABUSE: RESEARCH AND TREATMENT 1 (2023), available at <https://pubmed.ncbi.nlm.nih.gov/37187466/> (last accessed on March 18, 2025).

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term that encompasses even plants not scientifically categorized as marijuana which do not produce psychoactive effects.

Just like how there are different dog breeds, the plant species *Cannabis sativa L.* has many variations which can be categorized into two groups: hemp and marijuana. The difference between the two is determined by how much of the cannabinoid THC is in the plant. Hemp plants do not contain more than 0.3% THC and are the main source for CBD.²¹ Due to its low THC levels, hemp does not produce the feeling of being “high.” Meanwhile, plants that have more than 0.3% concentration of THC are classified as marijuana.²²

Hence, not all cannabis plants are considered marijuana. Selective crossbreeding of cannabis has also made it possible to create plants that have almost negligible amounts of THC, going well below 0.3%.²³

If the goal of Republic Act No. 9165 is to protect our people against drug abuses without sacrificing legitimate medical needs, then the law could be worded more narrowly to account for the possible medicinal use of cannabis derivatives, such as CBD. The way that the law is currently phrased makes it difficult, if not nearly impossible, to obtain cannabis and cannabis derivatives for research and legitimate medical use.

Notably, a perusal of the treaties attached as annexes to Republic Act No. 9165 shows that while the 1961 United Nations Single Convention on Narcotic Drugs, as amended by the 1972 Protocol, listed “Cannabis and Cannabis resin and extracts and tinctures of cannabis” as a Schedule I drug,²⁴ the 1971 United Nations Convention on Psychotropic Substances did not mention cannabis in general as a Schedule I drug—only THC.²⁵ This bolsters the conclusion that a distinction must be made between the psychoactive and nonpsychoactive derivatives of cannabis, and that not all cannabis derivatives should be declared illegal.

Thus, the sweeping prohibition of cannabis must be reexamined in light of the State’s policy in Republic Act No. 9165 to balance its goals of guarding against drug abuse, on one hand, and giving adequate care for those with legitimate medical needs, on the other. This Court is mandated not only to

²¹ THE NATIONAL ACADEMIES OF SCIENCES, ENGINEERING, AND MEDICINE, *THE HEALTH EFFECTS OF CANNABIS AND CANNABINOIDS: THE CURRENT STATE OF EVIDENCE AND RECOMMENDATIONS FOR RESEARCH* 38, 45 (2017).

²² Alexander Acosta & Jose Almirall, *Differentiation between hemp-type and marijuana-type cannabis using the Fast Blue BB Colorimetric Test*, 26 *FORENSIC CHEMISTRY* 1 (2021). See US Agricultural Act of 2018.

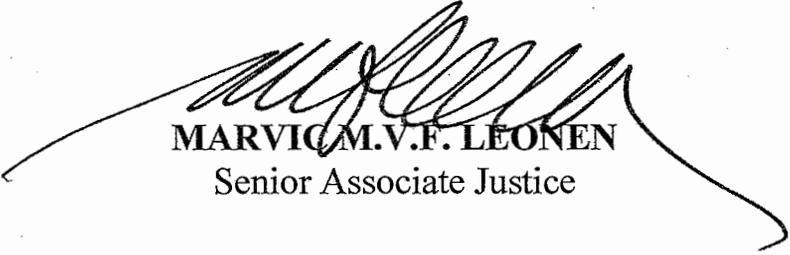
²³ Nephi Stella, *THC and CBD: Similarities and differences between siblings*, 111 *NEURON* 302, 312 (2023), available at [https://www.cell.com/neuron/pdf/S0896-6273\(22\)01119-9.pdf](https://www.cell.com/neuron/pdf/S0896-6273(22)01119-9.pdf) (last accessed on March 18, 2025).

²⁴ Single Convention on Narcotic Drugs, 1961, December 13, 1964, 520 UNTS 151, available at https://www.unodc.org/pdf/convention_1961_en.pdf (last accessed on March 18, 2025).

²⁵ Republic Act No. 9165 (2002), sec. 3(j). See also Convention on Psychotropic Substances, 1971, August 16, 1976, 1019 UNTS 175, available at https://www.unodc.org/pdf/convention_1971_en.pdf (last accessed on March 18, 2025).

interpret the laws but to deliver justice and safeguard meaningful freedoms. It would be nothing short of an injustice to deny people with illnesses a cure just because of a sweeping generalization.

ACCORDINGLY, I vote to **DISMISS** the appeal.



MARVIC M.V.F. LEONEN
Senior Associate Justice