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Wrong Man, Wrong War

A case of mistaken identity in the war on drugs, and not an isolated case, either

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Last summer, when Siddharth Patel stepped off the plane in Newark Airport on the way back from his honeymoon in India, a team of federal agents was waiting for him. They snatched the surprised newlywed from the customs gate and spirited him down in handcuffs to a detention cell where they told him he was under arrest. He asked to know what he had done wrong, but the arresting officials refused to tell him. Over the next twelve days, Patel would be transported to and from several prisons across the country, often unable to talk to his family or even to his attorneys for days at a time. Discussing it after the fact, his tone is still heavy with bewilderment: “I had no idea what was going on.”

Patel, a U.S. citizen, had been snared in the dragnet of “Operation Meth Merchant,” an undercover federal sting operation designed to crack down on the manufacturing of illegal methamphetamines in the state of Georgia. As his luck would have it, he was quickly being cast as yet another unhappy player in the perverse drama that is the federal war on drugs.

At the time of his arrest, Patel had never even heard of meth, the drug that prosecutors were citing in connection to his incarceration. “The only drugs I knew about were marijuana or cocaine,” he says. “I had no clue what [meth] was. I had to wait until after I got released to find out more about it.” Patel’s attorneys, once he was able to secure them, quickly explained that the Meth Merchant sting did not actually target drug producers, dealers, or buyers. Instead, it was directed against convenience-store clerks who were selling over-the-counter items — matches, charcoal, camping fuel, cold medicine — to customers who might then use them to manufacture meth.

As Patel eventually learned, it is illegal to sell a product to a person if you know or should know that he is going to use it to produce illicit drugs. In the meth production process, various chemical ingredients can be extracted from household products. Red phosphorus, for example, is a key meth component that can be taken from matchbook scratchpads.

So the feds thought Patel was a convenience-store clerk in Georgia who had sold products to people who he had reason to believe were drug producers. For this, they sought to lock him away, refusing to release him on bond for almost two weeks and threatening him with up to 20 years in jail and \$200,000 in fines. They claimed to have

undercover audio and video evidence of the sales, along with testimony from a confidential informant who swore that he had made illicit purchases from Patel.

The only problem, Patel kept protesting, was that he wasn't a convenience-store clerk; he hadn't been in the store in question on the day the feds said he was; in fact, he hadn't even been in the state of Georgia that day. He had been in his new hometown of Hicksville, N.Y. — where he had recently moved from Georgia — working at his sister's Subway sandwich shop. The feds' undercover tapes must have had someone else on them.

One of Patel's defense attorneys, McCracken Poston, knew that the misidentification of his client was not just an isolated mistake. Another of his clients, Malvika Patel (no relation to Siddharth), had also been misidentified, mistakenly arrested, and wrongfully jailed in the Meth Merchant mess. Poston had already helped Malvika corroborate her alibi and get her charges dropped, and eventually he was able to do the same for Siddharth — but not before the hapless defendant had to spend \$55,000 in legal fees and endure twelve days of incarceration.

It is still not entirely clear how the misidentifications of Siddharth and Malvika occurred. The former had both a Georgia driver's license and a car registered in the state. Defense attorneys have speculated that federal informants identified the Meth Merchant suspects by looking at driver's-license photographs, but the U.S. district attorney's office in the Northern District of Georgia did not return repeated phone calls from National Review to address this point, or any other.

As Poston tells it, the travails of Malvika and Siddharth are representative of the overall sloppiness and confusion that have pervaded Operation Meth Merchant from its inception. "Every-thing about this stinks," he says, laying out the tale of a law-enforcement campaign that has been almost as flawed in its execution as it was misguided in its grand design.

In order to be guilty of providing material support to drug producers, the accused store clerks would have had to know — or have reason to believe — that they were selling products that would be used to manufacture illegal drugs. Yet 44 out of the 49 defendants in this operation are of Indian descent, and in many cases their English falls far short of fluency. As Anjali Verma of the ACLU points out, many of them simply lack the conversational and cultural aptitude necessary to determine when a customer might be planning to cook up some meth.

I called one store where an employee was still facing charges for selling matches and two bottles of pseudoephedrine — an over-the-counter cold medicine — to an undercover informant. I spoke with the storeowner and the accused employee, both Indian immigrants who asked not to be identified. (An attorney for the store's corporation says a plea deal is in the works, in which the corporation may pay a fine in exchange for the charges' being dropped against the employee.)

About his employee, the storeowner says, “He speaks English enough just to do the transactions [at the cash register]. He came from India maybe three years ago, and has been working maybe twelve hours per day since then.” When I ask whether he thinks his employee understood what meth was at the time of his arrest, the owner responds, “He has never been involved in any type of drugs, so how is he supposed to know about any methamphetamine?”

I ask the owner to put his employee on the phone, and he reluctantly agrees. “But speak slowly,” he says, “and he will maybe understand a little.” Speaking slowly and repeating myself a few times, I ask the employee to describe what went on in the transaction for which he is being prosecuted. He recalls a customer who came into his store: “He just told me, ‘I need a case of matches.’ So I said okay, and I just gave [it] to him. . . . Then he [asked] for a case of ephedrine medicine, and I said no. My manager [said] only sell two bottles. He was asking for [a] case four or five times, I am saying no, no, no.”

I ask, “Did you think the customer had the intention of making illegal drugs?” “No, nothing he talk about that thing.” “Had you ever heard of the drug called meth before?” “No, I had never heard about any thing called meth.” When I press him further, he admits that the customer said something about having a “good cook going on” — a phrase that, according to prosecutors, is commonly known to refer to the meth production process. But when I ask the accused employee about this, he says, “People come in and say they are having a cook, cooking something, ask[ing] for matches. I [was] thinking he was having [a] barbecue.”

Such is the state of the ongoing war on drugs, where a sales clerk’s misunderstanding can land him in the crosshairs of a federal task force. Add this to the burden of costs that our country has borne for the sake of drug prohibition. We have put up with wasted tax dollars, broken families, swollen prisons, and swamped police forces. Now shopkeepers are being hounded by federal agents for selling legal products that have the alchemical potential to be transmuted into street drugs. And, on top of that, the feds can’t even pick the right shopkeepers to hound. As these outrages multiply, and the costs keep piling up, why do we continue to tolerate it?