



Republic of the Philippines
Supreme Court
Manila

CERTIFIED TRUE COPY
Wilfredo V. Lapitan
WILFREDO V. LAPITAN
Division Clerk of Court
Third Division

AUG 30 2018

THIRD DIVISION

DOMINGO AGYAO MACAD @
AGPAD,

Petitioner,

G.R. No. 227366

Present:

VELASCO, JR., J., *Chairperson*,
BERSAMIN,
LEONEN,
MARTIRES,* and
GESMUNDO, JJ.

- versus -

PEOPLE OF THE PHILIPPINES,
Respondent.

Promulgated:

August 1, 2018

Wilfredo V. Lapitan

X ----- X

DECISION

GESMUNDO, J.:

This an appeal by *certiorari* which seeks to reverse and set aside the March 17, 2016 Decision¹ and August 30, 2016 Resolution² of the Court Appeals (CA) in CA-G.R. CR-H.C. No. 06638. The CA affirmed the September 16, 2013 Judgment³ and the January 10, 2014 Resolution⁴ of the Regional Trial Court, Bontoc, Mountain Province, Branch 36 (RTC) in Criminal Case No. 2011-11-29-108. The RTC found Domingo Agyao Macad

* On leave.

¹ *Rollo*, pp. 64-77; penned by Associate Justice Noel G. Tijam with Associate Justices Francisco P. Acosta and Eduardo B. Peralta, Jr., concurring.

² *Id.* at 78-79.

³ *Id.* at 40-59; penned by Judge Sergio T. Angnganay, Jr.

⁴ *Id.* at 60-63.

AP

a.k.a. Agpad (*petitioner*) guilty of violating Section 5, Article II of Republic Act (R.A.) No. 9165 or the *Comprehensive Dangerous Drugs Act of 2002*.

The Antecedents

In an information dated November 29, 2011, petitioner was charged with violating Section 5, Article II of R.A. No. 9165. When arraigned, he pleaded “not guilty.” Thereafter, trial ensued.

Version of the Prosecution

In the afternoon of November 27, 2011, PO1 Davies Falolo (*PO1 Falolo*), who was not on duty, boarded a Bing Bush bus bound for Bontoc, Mountain Province. He sat on the top of the bus as it was full. At Botbot, petitioner boarded the bus. He threw his carton baggage over to PO1 Falolo. Petitioner, also carrying a Sagada woven bag, then sat on top of the bus, two (2) meters away from PO1 Falolo.⁵

When petitioner threw his carton box, PO1 Falolo already suspected that it contained marijuana because of its distinct smell and irregular shape. He was also dubious of the Sagada woven bag that petitioner had because it was supposed to be oval but it was rectangular in shape. PO1 Falolo planned to inform other police officers at the barracks but he was unable to do so because he ran out of load to send a text message.⁶

Upon reaching Bontoc, petitioner alighted at Caluttit, while PO1 Falolo went down at the Department of Public Works and Highways (*DPWH*) Compound to buy load for his cellular phone. Unable to find any store selling load, PO1 Falolo hailed a tricycle and asked to be brought to Caluttit. PO1 Falolo seated at the back of the driver. When the tricycle arrived at Caluttit, petitioner was still there and hailed and rode inside the same tricycle, with PO1 Falolo still seated behind the driver.⁷

When the tricycle reached the Community Police Assistance Center (*COMPAC*) circle, PO1 Falolo stopped the tricycle and called SPO2 Gaspar Suagen (*SPO2 Suagen*), who was then on duty. While SPO2 Suagen approached them, PO1 Falolo asked petitioner if he could open his baggage, to which the latter replied in the affirmative. However, petitioner suddenly ran away from the tricycle towards the Pines Kitchenette. Both police officers ran after him and apprehended him in front of Sta. Rita Parish Church. Petitioner

⁵ Id. at 65.

⁶ Id.

⁷ Id. at 66.

was then handcuffed and he, together with his baggage, were brought to the Municipal Police Station.⁸

At the police station, the baggage of petitioner were opened and these revealed eleven (11) bricks of marijuana from the carton baggage and six (6) bricks of marijuana from the Sagada woven bag. The seized items were marked, photographed and inventoried in the presence of petitioner, the barangay chairman, a prosecutor and a media representative. The bricks from the carton baggage weighed 10.1 kilograms; while the bricks from the Sagada woven bag weighed 5.9 kilograms. The items were brought to the Regional Crime Laboratory Office for a forensic examination, which yielded a positive result for marijuana.⁹

Version of the Defense

On November 27, 2011, petitioner boarded a Bing Bush bus and sat on top. With him was an unidentified man, who had a carton box. When he alighted from the bus, petitioner called for a tricycle where PO1 Falolo and the unidentified man had already boarded. The unidentified man then asked petitioner to have his baggage dropped at the “circle” and the former alighted at the motorpool.¹⁰

Upon reaching the COMPAC, PO1 Falolo stopped the tricycle and asked petitioner why his companion left. Petitioner denied that he had a companion. When he saw PO1 Falolo call for another police officer, he ran away. Realizing that the baggage was not his, petitioner stopped near the church. At this point, PO1 Falolo and another police officer caught him and arrested him. Petitioner was then brought to the COMPAC, where they waited for thirty (30) minutes before going to the municipal hall. There, he was coerced to confess that the baggage was his.


The RTC Ruling

In its January 10, 2014 judgment, the RTC found petitioner guilty of transporting illegal drugs and sentenced him to suffer the penalty of life imprisonment and to pay a fine of Five Hundred Thousand Pesos (₱500,000.00). The trial court ruled that petitioner’s warrantless arrest was legal because he was caught *in flagrante delicto* of transporting marijuana, and, as such, the subsequent search and seizure of the marijuana was legal as an incident of a lawful arrest. In addition, it posited that the integrity and

⁸ Id.

⁹ Id. at 66-67.

¹⁰ Id. at 67.



evidentiary value of the drugs seized were preserved. The RTC observed that no considerable time had elapsed from the time petitioner ran away until he was arrested. Also, the trial court noted that the immediate marking of the seized items at the nearest police station was valid. Further, it stated that the witnesses were able to explain the minor inconsistencies in the documentary evidence presented. The *fallo* of the RTC judgment reads:

ACCORDINGLY, judgment is hereby rendered finding the accused DOMINGO AGYAO MACAD GUILTY beyond reasonable doubt of the crime [of violation] of Section 5 of R.A. [No.] 9165 and is sentenced to suffer the penalty of LIFE IMPRISONMENT and a fine of FIVE HUNDRED THOUSAND PESOS (PhP500,000.00).

The subject prohibited drugs are forfeited in favor of the government and are hereby directed to be turned over with dispatch to the Philippine Drug Enforcement (PDEA) for disposition in accordance with the law.

Pursuant to Administrative Circular No. 4-92-A of the Court Administrator, the District Jail Warden of the Bureau of Jail Management and Penology, Bontoc District Jail, Bontoc, Mountain Province is directed to immediately transfer the accused, DOMINGO AGYAO MACAD, to the custody of the Bureau of Corrections, Muntinlupa City, Metro Manila after the expiration of fifteen (15) days from date of promulgation unless otherwise ordered by this Court.

SO ORDERED.¹¹

Petitioner filed a motion for reconsideration but it was denied by the RTC in its resolution dated January 10, 2014.

Undaunted, petitioner appealed to the CA.

The CA Ruling

In its March 17, 2016 decision, the CA affirmed the RTC's decision. The appellate court agreed that the search conducted was an incident of a lawful arrest because petitioner's warrantless arrest was valid as it fell under Section 5(a) and (b), Rule 113 of the Rules of Court. The CA also noted that the pungent smell of marijuana emanating from the baggage of petitioner constituted probable cause for PO1 Falolo to conduct a warrantless arrest. It likewise reiterated that the prosecution was able to establish the chain of custody.

¹¹ Id. at 59.

Petitioner moved for reconsideration, but it was denied by the CA in its September 23, 2016 resolution.

Hence, this petition.

ISSUES

Petitioner argues that:

THE COURT OF APPEALS COMMITTED MISAPPREHENSION OF FACTS AND CONSEQUENTLY ERRED AND GRAVELY ABUSED ITS DISCRETION IN UPHOLDING THE FINDING OF THE REGIONAL TRIAL COURT THAT THE ACCUSED WAS COMMITTING A CRIME WHEN HE WAS ARRESTED THEREBY JUSTIFYING HIS WARRANTLESS ARREST AND EVENTUAL SEARCH AND SEIZURE.

THE COURT OF APPEALS GRAVELY ABUSED ITS DISCRETION IN NOT EXCLUDING THE MARIJUANA ALLEGEDLY [SEIZED] FROM THE PETITIONER IN [CONSONANCE] WITH ARTICLE III, SECTION 3(2) OF THE 1987 CONSTITUTION.

THE COURT OF APPEALS ERRED AND GRAVELY ABUSED ITS DISCRETION IN UPHOLDING THE FINDING OF THE REGIONAL TRIAL COURT THAT THE CHAIN OF CUSTODY OF THE SEIZED DRUG WAS PROPERLY ESTABLISHED.¹²

Petitioner asserts that the search conducted was neither an incident of a lawful arrest nor was it made with his consent. He assails that PO1 Falolo's actions belie that he had probable cause to believe that petitioner was transporting marijuana because it took him a long time to make any overt act in arresting petitioner.

In addition, petitioner argues that the integrity of the items seized was compromised because the baggage, which contained the drugs, were left behind when the police officers chased him. Also, he claims that the procedure prescribed under Section 21 of R.A. No. 9165 was not followed because the marking, photography and inventory were not immediately made at the place of arrest.

¹² Id. at 15-16.

In its Comment,¹³ respondent, through the Office of the Solicitor General (*OSG*), argues that at the moment petitioner boarded the bus, PO1 Falolo had probable cause to conduct the warrantless search and seizure on petitioner's personal effects due to the distinctive smell of marijuana emanating from petitioner's carton baggage and the unusual shape of the Sagada woven bag. It also states that the probable cause of PO1 Falolo was reinforced when petitioner ran away when asked for permission to check his baggage. Respondent concludes that petitioner's warrantless arrest and incidental search from such arrest were based on the existence of probable cause.

Respondent also argues that PO1 Falolo immediately tried to contact the Provincial Head Quarters (*PHQ*) when he had probable cause that petitioner was transporting marijuana, but his cellular phone ran out of load; and that the integrity and evidentiary value of the seized items were preserved because all the police officers involved in the chain of custody took the necessary precautions to ensure that there had been no change in the condition of the marijuana bricks. It further avers that the minor discrepancy in the document, entitled "Turn Over of Evidence," is too inconsequential to affect the integrity and evidentiary value of the seized items.

In his Reply,¹⁴ petitioner reiterates that PO1 Falolo did not have probable cause to search his baggage because he did not immediately confront him regarding the matter; and that PO1 Falolo's indifferent actions cast doubt on his certainty that petitioner's baggage contained illegal drugs.

The Court's Ruling


The petition lacks merit.

*Petition resorted to the
wrong mode of appeal*

Section 13 (c), Rule 124 of the Rules of Court, as amended, states that "[i]n cases where the CA imposes *reclusion perpetua*, life imprisonment or a lesser penalty, it shall render and enter judgment imposing such penalty. The judgment may be appealed to the Supreme Court by notice of appeal filed with the Court of Appeals." Hence, an accused, upon whom the penalty of *reclusion perpetua* or life imprisonment had been imposed by the CA, can simply file a notice of appeal to allow him to pursue an appeal as a matter of

¹³ Id. at 90-116; prepared by Solicitor General Jose C. Calida, Senior State Solicitor M.L. Carmela P. Aquino-Cagampang, and Associate Solicitor Ronn Michael M. Villanueva.

¹⁴ Id. at 125-132.



right before the Court, which opens the entire case for review on any question including one not raised by the parties.¹⁵

On the other hand, an accused may also resort to an appeal by *certiorari* to the Court via Rule 45 under the Rules of Court. An appeal to this Court by petition for review on *certiorari* shall raise only questions of law. Moreover, such review is not a matter of right, but of sound judicial discretion, and will be granted only when there are special and important reasons.¹⁶

In other words, when the CA imposed a penalty of *reclusion perpetua* or life imprisonment, an accused may: (1) file a notice of appeal under Section 13 (c), Rule 124 to avail of an appeal as a matter of right before the Court and open the entire case for review on any question; or (2) file a petition for review on *certiorari* under Rule 45 to resort to an appeal as a matter of discretion and raise only questions of law.¹⁷

In this case, the CA affirmed the RTC decision imposing the penalty of life imprisonment to petitioner. Notably, however, the petition filed before this Court invokes grave abuse of discretion in assailing the CA decision, which is a ground under a petition for *certiorari* under Rule 65 of the Rules of Court. In any event, even if the instant petition is treated as a petition for review on *certiorari* under Rule 45, which is limited to questions of law, it still raises questions of fact because it essentially assails the appreciation of the testimonial and documentary evidence by the CA and the RTC.¹⁸ As a rule, these questions of fact cannot be entertained by the Court under Rule 45. Thus, the petition is procedurally infirm.

Nonetheless, even if the questions of fact raised by petitioner are considered by the Court, the petition is still bereft of merit.

PO1 Falolo had probable cause to conduct a valid warrantless arrest and a valid incidental search

Rule 113 of the Rules of Court identifies three (3) instances when warrantless arrests may be lawfully effected. These are: (a) an arrest of a suspect *in flagrante delicto*; (b) an arrest of a suspect where, based on personal knowledge of the arresting officer, there is probable cause that said

¹⁵ *Dungo, et al. v. People*, 762 Phil. 630, 651 (2015).

¹⁶ *Id.* at 652.

¹⁷ *Id.*

¹⁸ If the petition requires a calibration of the evidence presented, then it poses a question of fact, which cannot be raised before the Court; see *Republic of the Phils. v. Rayos Del Sol, et al.*, 785 Phil. 877, 887 (2016).

suspect was the perpetrator of a crime which had just been committed; and (c) an arrest of a prisoner who has escaped from custody serving final judgment or temporarily confined during the pendency of his case or has escaped while being transferred from one confinement to another.¹⁹

In warrantless arrests made pursuant to Section 5 (a), Rule 113, two (2) elements must concur, namely: (a) the person to be arrested must execute an overt act indicating that he has just committed, is actually committing, or is attempting to commit a crime; and (b) such overt act is done in the presence or within the view of the arresting officer. On the other hand, Section 5 (b), Rule 113 requires for its application that at the time of the arrest, an offense had in fact just been committed and the arresting officer had personal knowledge of facts indicating that the accused had committed it.²⁰

In both instances, the officer's personal knowledge of the fact of the commission of an offense is essential. Under Section 5 (a), Rule 113 of the Revised Rules of Criminal Procedure, the officer himself witnesses the crime; while in Section 5 (b) of the same, he knows for a fact that a crime has just been committed.²¹

A valid warrantless arrest which justifies a subsequent search is one that is carried out under the parameters of Section 5 (a), Rule 113 of the Rules of Court, which requires that the apprehending officer must have been spurred by probable cause to arrest a person caught in *flagrante delicto*. To be sure, the term probable cause has been understood to mean a reasonable ground of suspicion supported by circumstances sufficiently strong in themselves to warrant a cautious man's belief that the person accused is guilty of the offense with which he is charged. Specifically, with respect to arrests, it is such facts and circumstances which would lead a reasonably discreet and prudent man to believe that an offense has been committed by the person sought to be arrested. In this light, the determination of the existence or absence of probable cause necessitates a re-examination of the factual incidents.²² Accordingly, after a valid warrantless arrest is effected, the officer may also conduct a valid warrantless search, which is incidental to such arrest.

Aside from a search incident leading to a lawful arrest, warrantless searches have also been upheld in cases involving a moving vehicle. The search of moving vehicles has been justified on the ground that the mobility

¹⁹ *Sindac v. People*, 794 Phil. 421, 429 (2016).

²⁰ *Id.* at 429-430.

²¹ *Peralta v. People*, G.R. No. 221991, August 30, 2017.

²² *Martinez v. People*, 703 Phil. 609, 617-618 (2013).

of motor vehicles makes it possible for the vehicle to be searched to move out of the locality or jurisdiction in which the warrant must be sought.²³

A search of a moving vehicle may either be a mere routine inspection or an extensive search. The search in a routine inspection is limited to the following instances: (1) where the officer merely draws aside the curtain of a vacant vehicle which is parked on the public fair grounds; (2) simply looks into a vehicle; (3) flashes a light therein without opening the car's doors; (4) where the occupants are not subjected to a physical or body search; (5) where the inspection of the vehicles is limited to a visual search or visual inspection; and (6) where the routine check is conducted in a fixed area.²⁴

On the other hand, an extensive search of a moving vehicle is only permissible when there is probable cause. When a vehicle is stopped and subjected to an extensive search, such a warrantless search has been held to be valid only as long as the officers conducting the search have reasonable or **probable cause** to believe before the search that they will find the instrumentality or evidence pertaining to a crime, in the vehicle to be searched.²⁵

This Court has in the past found probable cause to conduct without a judicial warrant an extensive search of moving vehicles in situations where (1) **there had emanated from a package the distinctive smell of marijuana**; (2) officers of the Philippine National Police (*PNP*) had received a confidential report from informers that a sizeable volume of marijuana would be transported along the route where the search was conducted; (3) [police officers] had received information that a Caucasian coming from Sagada, Mountain Province, had in his possession prohibited drugs and when the Narcom agents confronted the accused Caucasian, because of a conspicuous bulge in his waistline, he failed to present his passport and other identification papers when requested to do so; (4) [police officers] had received confidential information that a woman having the same physical appearance as that of the accused would be transporting marijuana; (5) the accused who were riding a jeepney were stopped and searched by policemen who had earlier received confidential reports that said accused would transport a large quantity of marijuana; and (6) where the moving vehicle was stopped and searched on the basis of intelligence information and clandestine reports by a deep penetration agent or spy — one who participated in the drug smuggling activities of the

²³ *People v. Bagista*, 288 Phil. 828, 836 (1992).

²⁴ *Caballes v. Court of Appeals, et al.*, 424 Phil. 263, 280 (2002).

²⁵ *Supra* note 23 at 836.

syndicate to which the accused belonged — that said accused were bringing prohibited drugs into the country.²⁶

In *People v. Claudio*,²⁷ a police officer rode a bus with the accused therein from Baguio City to Olongapo City. The officer noticed that the accused was acting suspiciously with her woven buri bag. While in transit, the officer inserted his finger in the buri bag and smelled marijuana. However, the officer did not do anything after he discovered that there was marijuana inside the bag of the accused until they reached Olongapo City. Right after the accused alighted from the bus, the officer apprehended her and brought her to the police station. There, a search on the bag of the accused yielded marijuana. In that case, the Court ruled that the officer had probable cause to conduct a valid warrantless arrest and make a warrantless search incidental to a lawful arrest.

In *People v. Vinecario*,²⁸ the accused therein were onboard a motorcycle when they sped past a checkpoint and the officers ordered them to return. Upon their return, the officers required them to produce their identification cards, but they failed to comply. The officers noticed that the accused were acting suspiciously with the military bag they were carrying because it was passed from one person to another. The officers then ordered one of the accused to open the bag. When the latter opened it, a package wrapped in paper was taken out and when one of the accused grabbed it, the wrapper was torn and the smell of marijuana wafted in the air. Thereafter, the accused were arrested and the items were confiscated. In that case, the Court ruled that there was probable cause to conduct an extensive search because of the numerous circumstances indicating that accused were offenders of the law.

In this case, the Court finds that PO1 Falolo had probable cause to believe that petitioner was carrying marijuana in his baggage. He testified as follows:

[Pros. DOMINGUEZ]

Q According to you when you reached Botbot a certain Domingo Macad [hailed the bus], what did you do Mr. Witness?

[Police Officer FALOLO]

A He [threw] his [carton] baggage and went at the top load, sir.

Q Before he [threw] you his baggage, what did he do?

A He [flagged] down the bus, sir.

xxx

²⁶ Supra note 24 at 281-282.

²⁷ 243 Phil. 795 (1988).

²⁸ 465 Phil. 192 (2004).

- Q When the bus stop, what did Domingo Macad do?
A He [threw] me his baggage, sir.
- Q How did he throw to you the baggage [carton]?
A He threw the baggage upwards, sir.
- Q Were you able to catch the [carton] baggage?
A Yes, sir.
- Q Aside from that what did you notice when he [threw] you that baggage [carton]?
A **The smell and the shape of the [carton], sir.**
- Q Will you describe to us the [carton] baggage of Domingo Macad?
A **The [carton] was supposed to be flat but it seems there is something at the top, sir.**
- Q Was there markings on this [carton]?
A Yes, sir. Magic flakes.
- Q After he threw you this [carton] what happened next?
A He immediately came to the top load, sir.
- Q How far were you seated from him?
A About two meters, sir.
- Q Aside from this [carton] what else did you notice when he went on top of the bus?
A I noticed a Sagada traveling pack, sir. **The shape of the bag is rectangular [but] it is supposed to be oval, sir.**
- Q What is the color of the bag?
A Blue, sir,
- Q Was he carrying this Sagada woven bag?
A Yes, sir.
- Q What did you notice to this woven bag, Mr. witness?
A **The shape, sir. When I touched [it], it's hard, sir.**
- Q What came to your mind when you [touched that] it's hard?
A **[I] suspected marijuana bricks, sir.**
- Q Why did you suspect that they are marijuana bricks?
A First, when he [threw] me the [carton] baggage [and] right there I [smelled] the odor [that] is the same as marijuana, sir.
- Q **You mean to say, when you [held] that [carton], you [smelled] marijuana leaves?**
A **Yes, sir.**

- Q Why are you familiar with the smell of marijuana leaves?
A It is familiar to us law enforces because in our trainings, our instructors showed to us the different kinds of marijuana. We touch and we smell, sir.
- Q That was during your training as police officers?
A Yes, sir and the same odor when we caught marijuana in Tocucan, sir.
- Q So you mean to say, Mr. witness, that at the time he [threw] you that [carton] and he boarded and [joined] you at the top load and so with the Sagada woven bag, you suspected marijuana leaves?
A Yes, sir.²⁹ (emphases supplied)

Evidently, petitioner hailed the same bus that PO1 Falolo was riding on the way to Bontoc, Mountain Province. He then threw his carton baggage to PO1 Falolo who was then seated on the roof and was toting a Sagada woven bag as well. Immediately, PO1 Falolo smelled the distinct scent of marijuana emanating from the carton baggage and noticed its irregular shape. He also noticed that the Sagada woven bag of petitioner was rectangular instead of an oval and, upon touching it, he noticed that it was hard.

Accordingly, PO1 Falolo had probable cause that petitioner was committing the crime of transporting dangerous drugs, specifically marijuana bricks, due to the unique scent of marijuana emanating from the bag and the unusual shapes and hardness of the baggage. As PO1 Falolo was not in uniform at that time, he intended to inform his colleagues at the PHQ Barracks to conduct a check point so that they could verify his suspicion about the transport of illegal drugs.³⁰ As seen in his testimony, **PO1 Falolo already had probable cause to conduct an extensive search of a moving vehicle** because he believed before the search that he and his colleagues would find instrumentality or evidence pertaining to a crime, particularly transportation of marijuana, in the vehicle to be searched.

However, PO1 Falolo discovered that his load was insufficient to make a phone call. Thus, without the back-up of his colleagues, he chose to remain vigilant of petitioner until he could contact them. When the bus reached Bontoc, petitioner alighted in lower Caluttit. On the other hand, PO1 Falolo alighted in front of the DPWH Compound, which was not more than a kilometer away from lower Caluttit, to look for cellphone load to contact his

²⁹ *Rollo*, pp. 45-47.

³⁰ *Id.* at 92.

colleagues. When he failed to find load for his phone, PO1 Falolo immediately boarded a tricycle back to lower Caluttit and sat at the back of the driver.

There, PO1 Falolo chanced upon petitioner, who boarded the same tricycle and sat inside. When the tricycle reached the COMPAC, PO1 Falolo stopped the tricycle and called SPO2 Suagen, who was on duty. He then asked petitioner if he could check his baggage and the latter answered in the affirmative. However, when petitioner saw SPO2 Suagen approaching the tricycle, he suddenly ran away towards the Pizza Kitchenette and left his baggage.

At that moment, PO1 Falolo also acquired probable cause to conduct a warrantless arrest on petitioner. There were numerous circumstances and overt acts which show that PO1 Falolo had probable cause to effect the said warrantless arrest: (1) the smell of marijuana emanating from the carton baggage; (2) the irregular shape of the baggage; (3) the hardness of the baggage; (4) the assent of petitioner in the inspection of his baggage but running away at the sight of SPO2 Suagen; and (5) leaving behind his baggage to avoid the police officers.

Petitioner's flight at the sight of the uniformed police officer and leaving behind his baggage are overt acts, which reinforce the finding of probable cause to conduct a warrantless arrest against him. The Court has held that the flight of an accused is competent evidence to indicate his guilt; and flight, when unexplained, is a circumstance from which an inference of guilt may be drawn. Indeed, the wicked flee when no man pursueth, but the innocent are as bold as lion.³¹

Based on these facts, PO1 Falolo had probable cause to believe that there was a reasonable ground of suspicion supported by circumstances sufficiently strong in themselves to warrant a cautious man's belief that petitioner is guilty of the offense charged. Petitioner was caught *in flagrante delicto* of transporting marijuana bricks by PO1 Falolo.

Consequently, when PO1 Falolo and SPO2 Suagen captured petitioner in front of the St. Rita Parish Church, they had probable cause to arrest him and bring him and his baggage to the police station. There, the police officers properly conducted a search of petitioner's baggage, which is an incident to a lawful arrest. Indeed, numerous devious circumstances surround the incident, from the time petitioner boarded the bus until he was caught after fleeing at

³¹ *People v. Niegas*, 722 Phil. 301, 313 (2013).

the sight of the police officer, that constitute as probable cause to arrest him and to conduct the warrantless search incidental to such lawful arrest.

Under the circumstances, PO1 Falolo could not immediately conduct the search

Petitioner's argument – that PO1 Falolo's finding of probable cause is not authentic because petitioner was not immediately arrested or searched in the bus or upon disembarking – is bereft of merit.

As properly discussed by the RTC, it was reasonable for PO1 Falolo not to immediately arrest petitioner.³² PO1 Falolo was not on duty and was not in uniform when he smelled the pungent odor of marijuana from the baggage of petitioner. They were in a crowded bus and any commotion therein may cause panic to the civilian passengers. Further, it was not shown that PO1 Falolo was carrying handcuffs, thus, he may not be able to single-handedly restrain petitioner.³³ Moreover, the Court finds that it was sensible for PO1 Falolo to wait for back-up as petitioner could be carrying a dangerous weapon to protect his two large bags of suspected marijuana.

When he saw petitioner disembark from the bus in lower Caluttit, PO1 Falolo did not immediately follow him; rather, PO1 Falolo disembarked in front of the DPWH. The RTC underscored that the proximity of the said place was not more than a kilometer away from lower Caluttit.³⁴ Thus, when PO1 Falolo failed to find load for his cellular phone, he was able to reach lower Caluttit immediately on board a tricycle and was able to chance upon petitioner due to the proximity of their positions. **Manifestly, PO1 Falolo's acts showed that he clung to his determination of probable cause to conduct an extensive search on the baggage of petitioner.** When PO1 Falolo saw his colleague SPO2 Suagen in the COMPAC, he decided that it was safe and reasonable to conduct the search and immediately asked permission from petitioner to examine his baggage.

Nevertheless, when petitioner suddenly ran away from the tricycle while SPO2 Suagen was approaching and left his baggage behind, PO1 Falolo also obtained probable cause to conduct a warrantless arrest. He was earnest in his probable cause that petitioner was committing a crime *in flagrante*

³² *Rollo*, p. 61.

³³ *Id.*

³⁴ *Id.* at 61-62.

delicto, thus, PO1 Falolo religiously pursued him until he was arrested and his baggage eventually searched as an incident thereof.

The chain of custody rule

Chain of custody means the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction. Such record of movements and custody of seized item shall include the identity and signature of the person who held temporary custody of the seized item, the date and time when such transfer of custody were made in the course of safekeeping and use in court as evidence, and the final disposition.³⁵ To ensure the establishment of the chain of custody, Section 21 (1) of RA No. 9165 specifies that:

(1) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory 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, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof.

Section 21 (a) of the Implementing Rules and Regulations (*IRR*) of R.A. No. 9165 supplements Section 21 (1) of the said law, viz:

(a) The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory 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, a representative from the media and the Department of Justice (DOJ), and any elected public official 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, further, that non-compliance with 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 of and custody over said items[.] (emphasis supplied)

³⁵ Section 1(b) of Dangerous Drugs Board Regulation No. 1, Series of 2002.

Based on the foregoing, Section 21 of R.A. No. 9165 requires the apprehending team, after seizure and confiscation, to immediately conduct a physically inventory; and photograph the same in the presence of **(1) the accused or the persons from whom such items were confiscated and/or seized, or his/her representative or counsel, (2) a representative from the media and (3) the DOJ, and (4) any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof.**³⁶

In the amendment of R.A. No. 10640, the apprehending team is now required to conduct a physical inventory of the seized items and photograph the same in **(1) the presence of the accused or the persons from whom such items were confiscated and/or seized, or his/her representative or counsel, (2) with an elected public official and (3) 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.³⁷ In the present case, as the alleged crimes were committed on November 27, 2011, then the provisions of Section 21 of R.A. No. 9165 and its IRR shall apply.

Notably, Section 21 of the IRR provides a saving clause which states that non-compliance with these requirements shall not render void and invalid such seizures of and custody over the confiscated items provided that **such non-compliance were under justifiable grounds and the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer or team.**³⁸

The exception found in the IRR of R.A. 9165 comes into play when strict compliance with the prescribed procedures is not observed. This saving clause, however, applies only (1) where the prosecution recognized the procedural lapses, and thereafter explained the cited justifiable grounds, and (2) when the prosecution established that the integrity and evidentiary value of the evidence seized had been preserved. The prosecution, thus, loses the benefit of invoking the presumption of regularity and bears the burden of proving — with moral certainty — that the illegal drug presented in court is the same drug that was confiscated from the accused during his arrest.³⁹

³⁶ *People v. Dahil, et al.*, 750 Phil. 212, 228 (2015).

³⁷ *People v. Dela Rosa*, G.R. No. 230228, December 13, 2017.

³⁸ *People v. Dela Cruz*, 591 Phil. 259, 271 (2008).

³⁹ *People v. Carlit*, G.R. No. 227309, August 16, 2017, citing *People v. Cayas*, 789 Phil. 70 (2016).

The prosecution substantially complied with the chain of custody rule

The Court finds that the prosecution was able to sufficiently comply with the chain of custody rule under Section 21 of R.A. No. 9165 and its IRR. When petitioner was apprehended, he and his baggage were brought to the Municipal Police Station. There, the seized items, consisting of eleven (11) bricks of marijuana from the carton baggage and six (6) bricks of marijuana from the Sagada woven bag, were marked, photographed and inventoried. At that moment, the presence of petitioner, Barangay Chairman Erlinda Bucaycay, DOJ representative Prosecutor Golda Bagawa, a media representative Gregory Taguiba, and a certain Atty. Alsannyster Patingan were secured by the police officers.⁴⁰ Accordingly, all the required witnesses under Section 21 of R.A. No. 9165 were obtained. Petitioner does not even question the sufficiency of the required witnesses.

The seized items were also immediately weighed. The eleven (11) bricks from the carton baggage weighed 10.1 kilograms; while six (6) bricks from the Sagada woven bag weighed 5.9 kilograms.⁴¹

After the marking, inventory and taking of photographs, SPO1 Jessie Lopez (*SPO1 Lopez*) prepared the inventory report and allowed the witnesses to sign it. SPO1 Lopez also signed the spot report. The seized items were then turned over to PO2 Jonathan Canilang (*PO2 Canilang*), who thereafter brought the said items along with the request for laboratory examination to SPO3 Oscar Cayabas (*SPO3 Cayabas*) of the Provincial Crime Laboratory, Bontoc, Mountain Province. SPO3 Cayabas then made a request for examination to the Regional Crime Laboratory Office. There, PSI Alex Biadang (*PSI Biadang*) received the request for examination, along with the seized items. After the examination, all the bricks tested positive for marijuana. The subject bag and carton, together with the seized marijuana bricks, were all identified in open court by PO1 Falolo and PSI Biadang.⁴²

Clearly, the prosecution was able to establish the chain of custody of the seized drugs. They were able to prove that all the persons who handled the drugs were duly accounted for and that the integrity and evidentiary value of the seized items were maintained by these persons until their presentation in court. In addition, there was no lapse or gap in the handling of the seized

⁴⁰ Supra note 7.

⁴¹ *Rollo*, p. 42.

⁴² Supra note 9.

items because the witnesses of the prosecution correctly identified the persons involved in the custody of the seized marijuana bricks.

The seized items may be marked in the nearest police station; minor discrepancy in the document is immaterial

Petitioner argues that the police officers should have immediately marked the seized items upon his arrest and should not have left the baggage in the tricycle.

The Court is not convinced.

As a rule, under the IRR, the physical inventory and photograph of the seized items shall be conducted at the place where the search warrant is served. Likewise, the marking should be done upon immediate confiscation. However, Section 21 of the IRR also provides an exception that the physical inventory and photography of the seized items may be conducted at the nearest police station or the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures. In such instance, provided that it is practicable, the marking of the seized items may also be conducted at nearest police station.

In *Imson v. People*,⁴³ the Court stated that to be able to create a first link in the chain of custody, what is required is that the marking be made in the presence of the accused and upon immediate confiscation. “Immediate Confiscation” has no exact definition. Thus, testimony that included the marking of the seized items at the police station and in the presence of the accused was sufficient in showing compliance with the chain of custody rules. Marking upon immediate confiscation contemplates even marking at the nearest police station or office of the apprehending team.

Similarly, in *People v. Bautista*,⁴⁴ the Court reiterated that the failure to mark the seized items at the place of arrest does not itself impair the integrity of the chain of custody and render the confiscated items inadmissible in evidence. Marking upon “immediate” confiscation can reasonably cover marking done at the nearest police station or office of the apprehending team,

⁴³ 669 Phil. 262 (2011).

⁴⁴ 723 Phil. 646 (2013).

especially when the place of seizure is volatile and could draw unpredictable reactions from its surroundings.

In this case, it was reasonable for the police officers not to conduct the marking immediately at the place of the arrest and seizure. Evidently, petitioner is a flight risk because he immediately ran away at the sight of SPO2 Suagen. To conduct the marking in an unsecured location may result in the escape of petitioner. Also, the seized baggage contained large quantities of marijuana. It would be impractical, if not dangerous, for merely two police officers to conduct the marking of such drugs in broad daylight and in open public, without the assistance and security of other police officers. Accordingly, it was prudent and rational for the police officers to conduct the marking in the police station. As stated earlier, PO1 Falolo and PSI Biadang were able to identify all the marked items in open court.

Further, there was no opportunity of tampering when PO1 Falolo and SPO2 Suagen ran after petitioner. As properly discussed by the RTC, there was no considerable time that elapsed from the moment that petitioner ran away from his baggage up to the time the police officers arrested him. The distance between the Sta. Rita Church, where petitioner was caught, and the COMPAC, where the baggage was left, was only about 500 meters. Thus, the police officers were able to immediately return to the baggage once they arrested petitioner. It would be the height of absurdity to require the police officers to simply wait at the tricycle while they freely allow petitioner to escape even though there was probable cause to believe that he was transporting illegal drugs.

Likewise, petitioner argues that the mistake in the document, entitled "Turn Over of Evidence," which states that six (6) bricks of marijuana were contained in a carton, instead of the Sagada woven bag, taints the chain of custody.

Again, the argument has no merit.

The RTC correctly observed that the statement in the turn over of evidence that the six (6) bricks of marijuana were contained in a carton, instead of the Sagada woven bag, was a minor oversight and does not in any way destroy the prosecution's case. PO1 Falolo testified that the six (6) bricks of marijuana were contained in the Sagada woven bag. When PO2 Canilang was presented as witness, he also testified that the six (6) bricks of marijuana were acquired in the Sagada woven bag. Both witnesses were able to properly identify the marking contained in the said bricks of marijuana from the Sagada




woven bag. These portions of the testimonies of the police officer were never assailed by petitioner during cross-examination, hence, these were readily admitted by the RTC.

Verily, it was only in the turn over of evidence that the minor mistake was found and it was a mere product of inadvertence. The testimonies of the prosecution witnesses sufficiently established that the six (6) bricks of marijuana were indeed found in the Sagada woven bag. Accordingly, it was proven by the prosecution that the six (6) marijuana bricks were seized from the Sagada woven bag belonging to petitioner, and not from the carton.


In fine, the guilt of petitioner for violating Section 5, Article II of Republic Act (R.A.) No. 9165 for transporting illegal drugs has been proven beyond reasonable doubt.

WHEREFORE, the petition is **DENIED**. The March 17, 2016 Decision and September 23, 2016 Resolution of the Court Appeals in CA-G.R. CR-H.C. No. 06638 are **AFFIRMED in toto**.

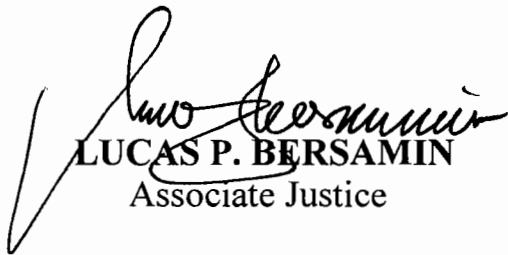
SO ORDERED.


ALEXANDER G. GESMUNDO
Associate Justice

WE CONCUR:

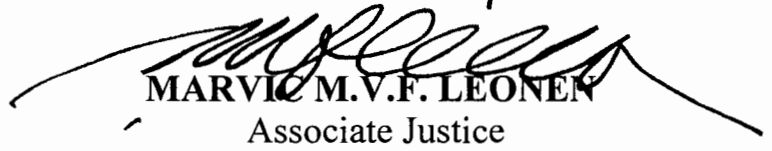


PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson



LUCAS P. BERSAMIN
Associate Justice

See concurring opinion in

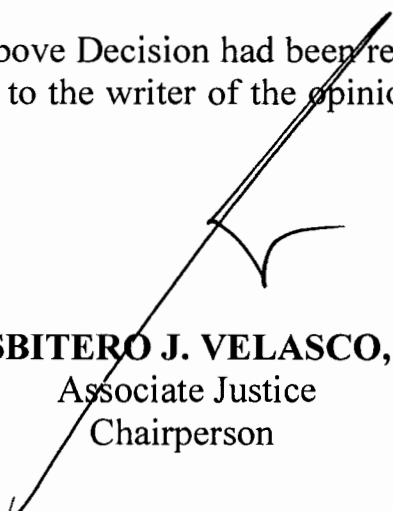


MARVIC M.V.F. LEONEN
Associate Justice

(On leave)
SAMUEL R. MARTIRES
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.



PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson



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.

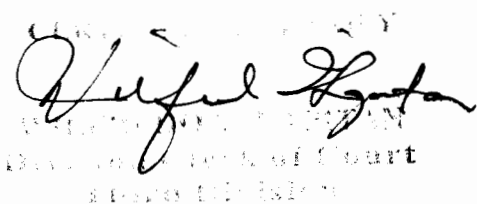


ANTONIO T. CARPIO

Senior Associate Justice

Per Section 12, R.A. 296

The Judiciary Act of 1948, as amended.



Verful H. ...
Division of Court
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