



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

G.R. No. 236259

Present:

PERALTA, *C.J.*, Chairperson,
CAGUIOA,
REYES, J.C., JR.,
LAZARO-JAVIER, and
LOPEZ, *JJ.*

- versus -

EMILIANO BATERINA y
CABADING,
Accused-Appellant.

Promulgated:

SEP 16 2020

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DECISION

LAZARO-JAVIER, J.:

The Case

Appellant Emiliano Baterina y Cabading assails the Court of Appeals' Decision¹ dated May 12, 2017, affirming his conviction for violation of Section 5, Article II of Republic Act No. 9165 (RA 9165).²

¹ Penned by Associate Romeo F. Barza and concurred in by Associate Justices Socorro B. Inting and Victoria Isabel A. Paredes, all members of the Special Seventeenth Division, *rollo*, pp. 2-15.

² Comprehensive Dangerous Drugs Act of 2002.

Proceedings Before the Trial Court

The Charge

By Information³ dated April 4, 2010, appellant Emiliano Baterina, together with Josefa Dayao, Ben Pakoyan, and Melina Puklis was charged with violation of Section 5 in relation to Section 26, Article II of RA 9165, viz.:

That on or about the 3rd day of August 2010 in the Municipality of San Gabriel, Province of La Union, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused conspiring, confederating and mutually helping with one another, did then and there willfully, unlawfully, feloniously and knowingly transport and deliver marijuana fruiting tops with a total weight of FORTY EIGHT THOUSAND FIVE HUNDRED SIXTY FIVE POINT SIXTY EIGHT (48,565.683 grams) with the use of Red Owner Type Jeep with plate no. PGE 708, without the necessary authority or permit from the proper government authorities.

Contrary to law.

The case was raffled to the Regional Trial Court (RTC) – Branch 66, San Fernando City, La Union.

On arraignment, appellant and his co-accused pleaded “not guilty.”⁴ Trial ensued.

The Prosecution’s Evidence

The testimonies of Police Officer 2 Magno Olete (PO2 Olete) of Philippine National Police (PNP) San Gabriel, La Union, Police Senior Inspector Reynaldo Soria (PSI Soria) of La Union Police Provincial Office, Police Inspector Maria Theresa Amor Manuel of PNP San Fernando La Union Regional Crime Laboratory Office, Barangay Captain Romeo Estolas, Jr. (Barangay Captain Estolas), and Media Representative Nestor Ducusin may be summarized in this wise:

On August 2, 2010, PSI Soria received a text message from a concerned citizen that men and women on board a jeep were transporting a large volume of dried marijuana leaves.⁵ PSI Soria immediately coordinated with the San Gabriel Police Station through Police Senior Inspector Eduardo Sarmiento (PSI Sarmiento). PSI Sarmiento conducted a briefing with his team composed of Police Officer 3 Reynaldo Abalos (PO3 Abalos), PO2

³ Record, pp. 1-2.

⁴ *Id.* at 44.

⁵ TSN, December 9, 2010, p. 5.

Olete, and Police Officer 1 Allain Ariz (PO1 Ariz).⁶ The San Gabriel Police, along with PSI Soria and Police Chief Inspector Godfrey Bustolan (PCI Bustolan) immediately put up a checkpoint at Sitio Quilat, Barangay Bumbuneg, San Gabriel, La Union.⁷

Early morning of the following day, August 3, 2010, around 2:30, the team flagged down an owner-type jeepney driven by appellant Baterina.⁸ Dayao, Pakoyan, Puklis, and a minor child were on board.⁹ PSI Soria walked to the back of the jeepney which emitted the peculiar odor of marijuana.¹⁰ He looked inside and saw a slightly opened bag containing marijuana bricks wrapped with a yellow tape.¹¹ The police officers then searched the vehicle and recovered several plastic bags also containing bricks of marijuana leaves.

At the *situs criminis*, and in the presence of appellant and his co-accused, PO2 Olete marked the seized items, *viz.*: one (1) green bag marked "A" containing four (4) bricks of marijuana, respectively marked as MOO and RTA A-1 to A-4;¹² one (1) black bag marked "B" containing two (2) bricks of marijuana, respectively marked MOO and RTA B-1 to B-2;¹³ one (1) yellow bag marked "C" containing eight (8) bricks of marijuana, respectively marked as MOO and RTA C-1 to C-8;¹⁴ one (1) red bag marked "D" containing five (5) bricks of marijuana, respectively marked as MOO and RTA D-1 to D-5;¹⁵ and one (1) blue bag marked "E" containing four (4) bricks of marijuana, respectively marked as MOO and RTA E-1 to E-4.¹⁶

The team brought appellant, Dayao, Pakoyan, Puklis, and the seized items to the San Gabriel Police Station for documentation. PO2 Olete prepared the inventory of the seized items in the presence of appellant and his co-accused, Barangay Captain Estolas, a representative from the Department of Justice (DOJ) Luciano Trinidad, and media representative Ducusin. PO2 Olete also took pictures of the seized items¹⁷ and prepared the Request for Laboratory Examination.¹⁸

Thereafter, PO2 Olete turned over the seized items and the Request for Laboratory Examination to Senior Police Officer 1 Stanley Campit (SPO1 Campit) who brought them to the PNP Regional Crime Laboratory, San Fernando La Union. There, Forensic Chemist Maria Theresa Amor Manuel received the same and did a chemical analysis thereof.¹⁹

⁶ Record, pp. 7-8.

⁷ TSN, December 9, 2010, p. 6.

⁸ *Id.* at 7.

⁹ *Id.* at 6.

¹⁰ *Id.* at 8.

¹¹ *Id.*

¹² TSN, October 5, 2010, p. 10.

¹³ TSN, October 7, 2010, p. 11.

¹⁴ TSN, October 5, 2010, p. 12.

¹⁵ *Id.* at 14.

¹⁶ *Id.* at 15.

¹⁷ Record, pp. 22-23; TSN, October 7, 2010, p. 20.

¹⁸ TSN, October 7, 2010, pp. 21-22.

¹⁹ Record, p. 15.

Per Chemistry Report No. D-073-10 dated August 3, 2010, Forensic Chemist Manuel confirmed that the specimens weighed forty-eight thousand five hundred sixty five point sixty eight (48,565.68) grams and were found positive for marijuana, a dangerous drug.²⁰

The prosecution submitted the following evidence: 1) Joint Affidavit,²¹ 2) Request for Laboratory Examination;²² 3) Chemistry Report No. D-073-10;²³ 4) Police Report;²⁴ 5) Appellant's Driver's license;²⁵ 6) Certificate of Inventory;²⁶ 7) Photographs of seized items;²⁷ and 8) the seized marijuana bricks.²⁸

The Defense's Version

Appellant testified that in the evening of August 2, 2010,²⁹ he received a text message from his co-accused Melina Puklis³⁰ asking his help to bring her child to a hospital in Balballayang, San Gabriel, La Union.³¹ He obliged and picked up Puklis and her child, Dayao, and Pakoyan. Appellant noticed they were carrying bags. When he asked them what was inside the bags they replied it was just clothes.³² On their way to the hospital, the police officers flagged him down, requested him and his co-accused to alight from the vehicle, and bring out the bags.³³ When the police officers opened the bags, he was surprised that it contained marijuana bricks.³⁴ He and his co-accused were immediately brought to the San Gabriel, La Union police station.

Accused Melina Puklis, Josefa Dayao, and Ben Pakoyan on the other hand, testified that Dayao hired appellant's services to drive them and Puklis' child to the hospital. Inside appellant's owner-type jeep, they noticed five (5) plastic bags. They asked appellant about the bags and the latter replied he was bringing them to Baguio City. *En route* the hospital, they were flagged down by the San Gabriel Police. They were asked to alight from the vehicle and were informed that the bags inside appellant's vehicle contained marijuana.³⁵

²⁰ *Id.* at 15.

²¹ *Id.* at 7-8.

²² *Id.* at 11-12.

²³ *Id.* at 15.

²⁴ *Id.* at 17.

²⁵ *Id.* at 21.

²⁶ *Id.* at 22-23.

²⁷ *Id.* at 26-29.

²⁸ *Id.* at 132.

²⁹ CA *rollo*, p. 70.

³⁰ TSN, May 28, 2013, p. 7.

³¹ *Id.* at 3.

³² *Id.* at 4.

³³ *Id.* at 5.

³⁴ *Id.*

³⁵ CA *rollo*, pp. 70-71.

The Trial Court's Ruling

By Decision³⁶ dated March 12, 2015, the trial court found appellant guilty as charged but acquitted his co-accused for lack of evidence to prove that they acted in conspiracy with appellant, thus:

WHEREFORE, in view of the foregoing, accused **EMILIANO BATERINA** is hereby found **GUILTY** beyond reasonable doubt of the crime charged in the Information and is hereby sentenced to suffer the penalty of life imprisonment and to pay a fine of ₱500,000.00.

Accused **JOSEFA DAYAO, BEN PAKOYAN, AND MELINA PUKLIS** are hereby **ACQUITTED**, prosecution failed to establish the guilt of the three accused beyond reasonable doubt. Consequently, accused Josefa Dayao, Ben Pakoyan and Melina Puklis are ordered released from custody, unless they are being charged from some other lawful cause/s.

The 48,565.68 grams of marijuana which are in the custody of the prosecution are ordered confiscated and turned over to the Philippine Drug Enforcement Agency (PDEA) for destruction in the presence of Court personnel and media.

SO ORDERED.³⁷

The trial court ruled that the police officers had probable cause to flag down and search appellant's vehicle. While inspecting appellant's vehicle, PSI Soria smelled the distinctive odor of marijuana and in fact found marijuana bricks inside the vehicle.³⁸ The very act of transporting illegal drugs is *malum prohibitum* where intent or knowledge of what is being transported is not necessary.³⁹ Thus, appellant's argument that he had no knowledge of the contents of the bags had no merit. More, the seized illegal drugs from appellant were the same drugs presented as evidence in court.⁴⁰

The Proceedings before the Court of Appeals

On appeal, appellant argued: his co-accused owned the bags and he had no knowledge that the same contained marijuana bricks;⁴¹ the police officers had no probable cause to search his vehicle.⁴² The search was not valid nor was his arrest, therefore, the seized items are inadmissible in evidence. Finally, the trial court erred when it overlooked the prosecution's breach of the chain of custody rule.⁴³

³⁶ Penned by Judge Victor O. Conception, CA rollo, pp. 68-77.

³⁷ *Id.* at 77.

³⁸ *Id.* at 74.

³⁹ *Id.* at 75.

⁴⁰ *Id.* at 77.

⁴¹ *Id.* at 36.

⁴² *Id.* at 38.

⁴³ *Id.* at 57.

For its part, the Office of the Solicitor General (OSG) through Assistant Solicitor General Ellaine Rose A. Sanchez-Corro and State Solicitor Manelyn E. Caturla, countered in the main: 1) the police officers had probable cause to effect a warrantless search and seizure;⁴⁴ 2) appellant was caught *in flagrante delicto*⁴⁵ at a checkpoint transporting marijuana; 3) appellant's objection to the legality of his arrest was deemed waived because he did not raise it prior to his plea;⁴⁶ and 4) the integrity and evidentiary value of the seized items negated appellant's argument that there was breach in the chain of custody.⁴⁷

The Court of Appeals' Ruling

By Decision⁴⁸ dated May 12, 2017, the Court of Appeals affirmed. It held that the constitutional proscription against warrantless searches and seizures admits of certain exceptions, *i.e.*, where the search and seizure happened in a moving vehicle.⁴⁹ The police officers here had probable cause to search appellant's vehicle which upon inspection, emitted the odor of marijuana. They in fact readily confirmed that marijuana bricks were inside the vehicle.⁵⁰ The search was valid and so was appellant's arrest.⁵¹ Besides, it was too late in the day to raise the issue against the legality of his arrest.⁵² Finally, the chain of custody was likewise shown to have not been breached.⁵³

The Present Appeal

Appellant now seeks affirmative relief from the Court and pleads anew for his acquittal.

In compliance with Resolution⁵⁴ dated March 19, 2018, the OSG manifested that in lieu of a supplemental brief, it was adopting its appellee's brief before the Court of Appeals.⁵⁵

On September 10, 2018, appellant filed his supplemental brief reiterating that since his arrest was unlawful, the ensuing warrantless search and seizure were illegal.⁵⁶ Consequently, the illegal drugs allegedly seized cannot be used against him for being fruits of a poisonous tree.

⁴⁴ *Id.* at 106-107.

⁴⁵ *Id.* at 91.

⁴⁶ *Id.* at 109.

⁴⁷ *Id.* at 112.

⁴⁸ *Rollo*, pp. 2-15.

⁴⁹ *Id.* at 9.

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.* at 11.

⁵⁴ *Id.* at 20-21.

⁵⁵ *Id.* at 22-24.

⁵⁶ *Id.* at 33.

Issue

Did the Court of Appeals err when it affirmed appellant's conviction for violation of Section 5, Article II of RA 9165 specifically illegal transporting of forty-eight thousand five hundred sixty-five point sixty-eight (48,565.68) grams of marijuana?

Ruling

The essential element of illegal transporting of dangerous drugs is the movement of the dangerous drugs from one (1) place to another.⁵⁷ To establish the guilt of the accused, it must be proved that: (1) the transportation of illegal drugs was committed; and (2) the prohibited drug exists.⁵⁸

In *People v. Asislo*,⁵⁹ the Court noted there was no definitive moment when an accused "transports" a prohibited drug. When the circumstances establish the purpose of an accused to transport and the fact of transporting itself, there should be no question as to the perpetration of the criminal act.⁶⁰ The fact that there is actual conveyance suffices to support a finding that the act of transporting was committed.⁶¹

The following facts here are undisputed: 1) On August 2, 2010, the San Gabriel Police together with PSI Soria put a checkpoint at Sitio Quilat, Barangay Bumbuneg, San Gabriel, La Union after PSI Soria received a text message from a concerned citizen that men and women on board a jeep were transporting a large volume of marijuana leaves; 2) In the evening of August 2, 2010, appellant drove his owner-type jeep from his residence to Balballayang, San Gabriel La Union to fetch Puklis who asked for his help to bring her sick child to the hospital; 3) Puklis, Dayao, and Pakoyan boarded appellant's vehicle for the purpose of bringing the child to the hospital; 4) *En route* the hospital early morning of the next day, they were flagged down as they reached the checkpoint at Sitio Quilat, Barangay Bumbuneg, San Gabriel, La Union; 5) PSI Soria approached appellant, Puklis, Dayao, and Pakoyan and asked them to alight from the vehicle; 6) When he proceeded to the back of the owner-type jeepney, he readily smelled the distinctive odor of marijuana leaves; 7) PSI Soria instantly saw one (1) slightly opened bag inside; 8) When he looked inside the bag, he saw marijuana bricks wrapped with a yellow tape; 9) This led the police officers to do a thorough search of appellant's owner-type jeep which yielded four (4) more plastic bags containing marijuana bricks.

Appellant was in the **act of transporting the drugs** when the police officers flagged him down at checkpoint. In fact, **he had already been**

⁵⁷ *People v. Asislo*, 778 Phil. 509, 522 (2016).

⁵⁸ *People v. Watamama*, 692 Phil. 102, 106 (2012).

⁵⁹ *Supra* note 57 at 523.

⁶⁰ *People v. Mariacos*, 635 Phil. 315, 333 (2010).

⁶¹ *Id.*

moving the drugs from one place to another as he drove his vehicle from his point of origin up until he reached the checkpoint where the drugs were seized and he and his co-accused got arrested.

In any event, the Court ruled that the intent to transport illegal drugs is presumed whenever a huge volume thereof is found in the possession of the accused until the contrary is proved.⁶²

In *People v. Asislo*,⁶³ the Court found three (3) plastic bags of marijuana leaves and seeds as a considerable quantity of drugs and that possession of a similar amount of drugs showed appellant's intent to sell, distribute, and deliver the same.

In *People v. Alacdis*,⁶⁴ appellant was found in possession of almost one hundred ten (110) kilos of marijuana. The Court ruled that such sheer volume by itself is a clear *indicium* of one's purpose to transport these drugs.

Here, forty-eight thousand five hundred sixty-five point sixty-eight (48,565.68) grams or more than forty-eight (48) kilos of marijuana is by no means a miniscule amount clearly indicating appellant's intent to deliver and transport them in violation of Section 5, Article II of RA 9165.

To negate liability, however, appellant claims these bags containing marijuana bricks did not belong to him but to Dayao, Pakoyan, and Puklis. He also denies knowledge of these contents.

The argument must fail.

The very act of transporting methamphetamine hydrochloride is *malum prohibitum* punishable under RA 9165. In *People v. Morilla*,⁶⁵ the Court held that the fact of transportation of the bags containing volumes of marijuana bricks **need not be accompanied** by proof of appellant's criminal intent, motive, or knowledge of the contents thereof.⁶⁶ Similarly, *People v. Noah*⁶⁷ ordains that proof of ownership and intent are not essential elements of the crime of illegal transporting of dangerous drugs.

Appellant further argues against his arrest allegedly because when the police officers searched his vehicle, they had no probable cause to do so.

We are not persuaded.

First, the right to question one's arrest should be made before one enters his or her plea on arraignment. *People v. Alunday*⁶⁸ is relevant:

⁶² *People v. Asislo*, supra note 57; *People v. Alacdis*, 811 Phil. 219, 232 (2017).

⁶³ *Id.*

⁶⁴ Supra note 62.

⁶⁵ 726 Phil. 244, 252 (2014).

⁶⁶ *Id.*

⁶⁷ G.R. No. 228880, March 6, 2019.

⁶⁸ 586 Phil. 120, 133 (2008).

The Court has consistently ruled that **any objection involving a warrant of arrest** or the procedure for the acquisition by the court of jurisdiction over the person of the accused **must be made before he enters his plea; otherwise, the objection is deemed waived.** We have also ruled that an accused may be estopped from assailing the illegality of his arrest if he fails to move for the quashing of the information against him before his arraignment. **And since the legality of an arrest affects only the jurisdiction of the court over the person of the accused, any defect in the arrest of the accused may be deemed cured when he voluntarily submits to the jurisdiction of the trial court.** (Emphasis supplied)

People v. Araza,⁶⁹ too, further clarified that the illegal arrest of an accused is not sufficient cause for setting aside a valid judgment rendered upon a sufficient complaint after a trial free from error. It will not even negate the validity of the conviction of the accused.

Here, appellant failed to object to his warrantless arrest before he entered his plea of “not guilty.” He likewise did not move to quash the Information or to exclude the evidence subject of the search and seizure prior to his arraignment. In fact, he actively participated in the proceeding before the trial court. He, therefore, was deemed to have voluntarily submitted himself to the jurisdiction of the trial court and waived any objection to his warrantless arrest.

Be that as it may, in *People v. Cogaed*,⁷⁰ the Court noted that one of the recognized instances of permissible warrantless search is the search of a moving vehicle. Police officers cannot be expected to appear before a judge and apply for a search warrant when time is of the essence considering the efficiency of vehicles in facilitating transactions involving contraband or dangerous articles.⁷¹ A checkpoint search is a variant of a search of a moving vehicle⁷² where only visual searches or inspections are allowed. An extensive search may be conducted on a vehicle at a checkpoint when law enforcers have probable cause, *i.e.*, upon a belief, that the vehicle's driver or passengers **committed a crime or when the vehicle contains instruments of an offense**⁷³ which by law is subject to seizure and destruction.⁷⁴

Here, the police officers flagged down appellant's vehicle at a checkpoint. When PSI Soria approached the owner-type jeepney, **he readily smelled the distinctive odor of marijuana.** Notably, an owner-type jeepney has no windows or glass-enclosures. He was then prompted to inspect the vehicle where he saw one (1) bag slightly opened. When he looked inside the bag, he saw marijuana bricks wrapped with a yellow tape. On further search, the police officers found four (4) more plastic bags containing the same dangerous drugs. At that moment, the police officers had probable

⁶⁹ 747 Phil. 20, 32 (2014).

⁷⁰ 740 Phil. 212, 228 (2014).

⁷¹ *Caballes v. Court of Appeals*, 424 Phil. 263, 278 (2002).

⁷² *People v. Manago*, 793 Phil. 505, 519 (2016).

⁷³ *Veridiano v. People*, 810 Phil. 642, 668 (2017).

⁷⁴ *People v. Libnao*, 443 Phil. 506, 515-516 (2003).

cause to search appellant's vehicle and seize the marijuana bricks found therein. For appellant was (1) **caught in the act of committing the crime of transporting dangerous drugs**, and (2) **his vehicle contained contraband items pertaining to the offense committed**. In this regard, the evidence obtained from a valid search of appellant's vehicle and the consequent seizure of the marijuana bricks found inside are not fruits of a poisonous tree. **They are in fact the *corpus delicti* itself**. Appellant's warrantless arrest as a consequence thereof was lawful.

The Court, in *Caballes v. Court of Appeals*,⁷⁵ elucidated that police officers had probable cause to conduct an extensive search of moving vehicle in situations where the police officers had received a confidential report from informers that a sizeable volume of marijuana would be transported along the route where the search was conducted; **and** when the moving vehicle was stopped on the basis of the intelligence information, **there had emanated from a package inside the vehicle a distinctive smell of marijuana**. The police officers **not just relied solely on the basis of the tipped information but also their personal experience**, *i.e.*, when they were able to smell the peculiar odor of marijuana from the package inside the vehicle which prompted them to do an extensive search.

Another case on probable cause involving illegal drugs is *People v. Mariacos*.⁷⁶ There, a police officer received an information from a secret agent that a baggage of marijuana had been loaded on a passenger jeepney that was about to leave for the *poblacion*. The agent mentioned three (3) bags and one (1) blue plastic bag. The agent further described a backpack bag with an "O.K." marking. On the basis of the tip, a police officer did surveillance operations on board a jeepney. When he saw the bag with an "O.K." mark, he peeked inside and smelled the distinct odor of marijuana emanating from the bag. The Court ruled that tipped information **and** the police officer's personal observations gave rise to probable cause that rendered the warrantless search valid.

Appellant, next argues that the police officers failed to comply with the chain of custody rule. He claims that the prosecution failed to testify who brought the items to the police station⁷⁷ and later to the PNP Crime Laboratory for examination.⁷⁸

We disagree.

Section 21 of RA 9165 prescribes the standard in preserving the *corpus delicti* in illegal drug cases, *viz.*:

Section 21. Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs,

⁷⁵ Supra note 71.

⁷⁶ Supra note 60.

⁷⁷ *Rollo* p. 57.

⁷⁸ *Id.* at 58.

Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment. – The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

(1) The apprehending team having initial custody and control of the 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;

(2) Within twenty-four (24) hours upon confiscation/seizure of dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment, the same shall be submitted to the PDEA Forensic Laboratory for a qualitative and quantitative examination;

(3) A certification of the forensic laboratory examination results, which shall be done under oath by the forensic laboratory examiner, shall be issued within twenty-four (24) hours after the receipt of the subject item/s: *Provided*, That when the volume of the dangerous drugs, plant sources of dangerous drugs, and controlled precursors and essential chemicals does not allow the completion of testing within the time frame, a partial laboratory examination report shall be provisionally issued stating therein the quantities of dangerous drugs still to be examined by the forensic laboratory: *Provided, however*, That a final certification shall be issued on the completed forensic laboratory examination on the same within the next twenty-four (24) hours; (*Emphasis supplied*)

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The Implementing Rules and Regulations of RA No. 9165 further decrees:

Section 21. (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 and underscoring supplied*)

The incident here happened before the enactment of RA 10640 in 2014, thus, the applicable law is RA 9165. Section 21 of its implementing rules requires that the physical inventory and photograph of the drugs should be done immediately after their seizure and confiscation in the presence of no less than three (3) witnesses, namely: (a) a representative from the media; (b) a representative from the Department of Justice (DOJ); and (c) any elected public official - - - who shall be required to sign copies of the inventory and given copy thereof.

This is echoed in Section 2 (a) of the Dangerous Drugs Board (DDB) Regulation No. 1, Series of 2002, to wit:

a. The apprehending team having initial custody and control of dangerous drugs or controlled chemical or plant sources of dangerous drugs or laboratory equipment shall immediately, after the seizure and confiscation, **physically inventory and photograph** the same in the presence of:

- (i) the person from whom such items were confiscated and/or seized or his/her representative or counsel;
- (ii) a representative from the media;
- (iii) a representative from the Department of Justice; and,
- (iv) any elected public official;

who shall be required to sign copies of the inventory report covering the drugs/equipment and who shall 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 seizure without warrant**; Provided further that non-compliance with these requirement under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team x x x. (*Emphasis supplied*)

Records show that upon seizure of the bags containing marijuana bricks here, PO2 Olete immediately marked them in the presence of appellant and his co-accused right at the place of arrest and seizure.

After the marking, appellant and the seized items were brought to San Gabriel, La Union, Police Station where PO2 Olete did the inventory in the presence of appellant, his co-accused, Barangay Captain Estolas, DOJ representative Luciano Trinidad, and media representative Nestor Ducusin.⁷⁹ Notably, the presence of the required insulating witnesses served to ensure the

⁷⁹ Record, pp. 22-23.

integrity and evidentiary value of the seized drugs. PO2 Olete also took photographs of the seized items.⁸⁰

PO2 Olete and PSI Soria testified, thus:

PO2 Olete's testimony:

Q: After you made the marking that you mentioned a while ago, what happened next?
A: We brought the bags back into the vehicle and we proceeded to the police station, sir.
Q: When you were at the police station, what did you do there?
A: xxx we conducted documentation and we prepared letter blotter.
Q: Aside from the blotter, what other documents did you prepare mister witness?
A: Inventory sir.⁸¹

PSI Soria's testimony:

Q: Why do you say that that is the Inventory you referred to?
A: I was present during that time, sir.
Q: In this inventory, there is a signature above the name Magno Olete, whose signature is this?
A: Magno Olete, Sir.
Q: There is also a signature here, whose signature is this?
A: Estolas, sir.
Q: And who is Estolas?
A: The Barangay Captain of Bunbeneg, sir.
Q: There is also a signature here, whose signature is this?
A: Nestor Ducusin sir, the media.
Q: And who is Nestor Ducusin?
A: The media representative, sir.
Q: There is also a signature here, whose signature is this?
A: The DOJ representative, sir.⁸²

In *Macad v. People*,⁸³ the Court decreed that under the Implementing Rules and Regulations of RA 9165, the physical inventory and photographing of the seized items shall be conducted at the place where the search warrant is served and the marking should be done upon immediate confiscation of the items in question. The Court though notes that Section 21 itself provides an exception in cases involving warrantless seizures where the physical inventory and photographing of the seized items may be conducted at the nearest police station or the nearest office of the apprehending officer/team, whichever is practicable, as in this case. *Macad* enunciated:

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

⁸⁰ CA rollo, p. 99.

⁸¹ TSN, October 7, 2010, p. 20.

⁸² TSN, December 9, 2010, pp. 24-25.

⁸³ G.R. No. 227366, August 1, 2018.

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.⁸⁴

PO2 Olete testified that he handed the request for laboratory examination and the specimens to SPO2 Campit who delivered the same to the PNP Regional Crime Laboratory, San Gabriel, La Union. Although SPO2 Campit did not testify in court, the same does not necessarily cast doubt on the integrity of the seized items. *People v. Padua*⁸⁵ decreed:

Further, not all people who came into contact with the seized drugs are required to testify in court. There is nothing in Republic Act No. 9165 or in any rule implementing the same that imposes such requirement. As long as the chain of custody of the seized drug was clearly established not to have been broken and that the prosecution did not fail to identify properly the drugs seized, it is not indispensable that each and every person who came into possession of the drugs should take the witness stand. x x x (Emphasis and underscoring supplied)

At the PNP Regional Crime Laboratory, Forensic Chemist Manuel received the request for laboratory examination and the specimens. Per her Chemistry Report No. D-073-10 dated August 3, 2010, she confirmed that the specimens yielded positive results for marijuana. She also testified that the seized items presented as evidence in court were the same items she subjected to qualitative examination.

Her Chemistry Report conformed with the details found in the inventory prepared by PO2 Olete. Thus, the prosecution's formal offer of evidence indicated that Exhibits H to H-3, H-4 to H-5, H-6 to H-13, H-14 to H-18, H-19 to H-22, and H-23 to H-27 represented the seized drugs themselves weighing forty-eight thousand five hundred sixty-five point sixty-eight (48,565.68) grams.⁸⁶ Notably, the defense **admitted** the genuineness and due execution of Forensic Chemist Manuel's Report⁸⁷ and **that the seized items reflected in her report were the same items presented in court as evidence.**⁸⁸

Indubitably, the identity and integrity of marijuana bricks **remained intact** at the time they were seized from appellant up until they were turned over to the forensic chemist for qualitative examination and finally presented as evidence in court.

In *People v. Sic-Open*,⁸⁹ the forensic chemist testified that the items presented as evidence against the accused for violation of Section 5, Article II

⁸⁴ *Id.*

⁸⁵ 639 Phil. 235, 251 (2010).

⁸⁶ Record, p. 132.

⁸⁷ TSN, September 28, 2010, pp. 5-6.

⁸⁸ *Id.* at 7-8.

⁸⁹ 795 Phil. 859, 868 (2016).

of RA 9165 were the same items which had undergone laboratory examination as reflected in her report. The Court ruled that this documentary and testimonial evidence presented by the prosecution supported the conclusion that the chain of custody had not been breached.

At any rate, the Court, once again, notes the large amount of marijuana seized by the police officers. We held in *Malillin v. People*⁹⁰ that the likelihood of tampering, loss, or mistake with respect to a seized illegal drug is greatest when the item is small and is one that has physical characteristics fungible in nature. But in *People v. Bayang*,⁹¹ we specifically pronounced that strict adherence to Section 21 of RA 9165 is required where the quantity of illegal drugs seized is minuscule, since it is highly susceptible to planting, tampering or alteration of evidence.

Applying *Malillin* and *Bayang* here, the forty-eight thousand five hundred sixty-five point sixty-eight (48,565.68) grams or more than forty-eight (48) kilos of marijuana here is by no means a minuscule amount, logically precluding the probability of planting, tampering, or alteration.

Going now to the credibility of PO2 Olete and PSI Soria as witnesses, both the trial court and the Court of Appeals found their testimony credible, straightforward, and direct. More important, both courts found that PO2 Olete and PSI Soria were not shown to have been impelled by malice or ill will to falsely charge appellant with such heinous offense of illegal transporting of a huge amount of marijuana. The Court, therefore, finds no reason to doubt the credibility of these witnesses.

Indeed, in cases involving violations of RA 9165, credence should be given to the narration of the incident by the prosecution witnesses especially when they are police officers who are not only presumed but have been clearly shown to have performed their official duty in a regular manner. *People v. Cabiles*⁹² is apropos, viz.:

The direct account of law enforcement officers enjoys the presumption of regularity in the performance of their duties. It should be noted that **“unless there is clear and convincing evidence that the police officers were inspired by any improper motive or did not properly perform their duty, their testimonies on the operation deserve full faith and credit.” Thus, unless the presumption is rebutted, it becomes conclusive.** Since, accused-appellant failed to present or refute the evidence presented against him, therefore, the conduct of the operation of the police officers prevails and is presumed regular. (Emphasis and underscoring supplied)

Surely, appellant’s bare denial and theory of frame up cannot prevail over the positive testimony of PO2 Olete and PSI Soria, let alone, the

⁹⁰ 576 Phil. 576, 588 (2008).

⁹¹ G.R. No. 234038, March 13, 2019.

⁹² 810 Phil. 969, 976 (2017).

presumption of regularity accorded them in the performance of their official duty.

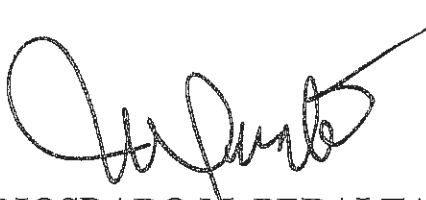
The Court of Appeals, therefore, did not err when it affirmed the trial court's verdict of conviction against appellant for violation of Section 5, Article II of RA 9165 as well as the penalty of life imprisonment and fine imposed on him.

ACCORDINGLY, the appeal is **DISMISSED** and the Decision dated May 12, 2017 of the Court of Appeals in CA-G.R. CR HC No. 07617, **AFFIRMED**. Appellant Emiliano Baterina y Cabading is found **GUILTY** of illegal transporting of forty-eight thousand five hundred sixty-five point sixty-eight (48,565.68) grams of marijuana, a dangerous drug as defined and penalized under Section 5, Article II of Republic Act No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002. He is sentenced to **LIFE IMPRISONMENT** and ordered to pay a **FINE** of ₱500,000.00.

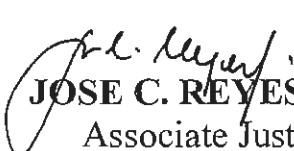
SO ORDERED.


AMY C. LAZARO- JAVIER
Associate Justice

WE CONCUR:

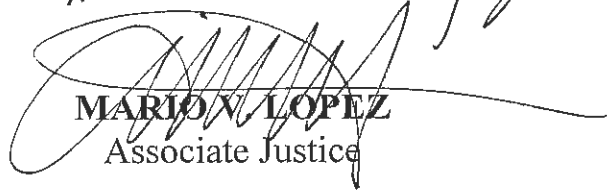

DIOSDADO M. PERALTA
Chief Justice
Chairperson


ALFREDO BENJAMIN S. CAGUIOA
Associate Justice


JOSE C. REYES, JR.
Associate Justice

*See
Dissenting
Opinion*

ps. see concurring opinion



MARIO N. LOPEZ
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, 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.



DIOSDADO M. PERALTA
Chief Justice

