

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. EFREN ESTEBAN Y PUSSAN, BRENDY BALUDDA Y DALMONES, JORDAN PAAYAS AND SAMUEL UJANO Y BALUDDA, ACCUSED. EFREN ESTEBAN Y PUSSAN A...

Ponente: SALAZAR-FERNANDO, J.

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SALAZAR-FERNANDO, J.:

Before this Court is an appeal from the Decision[1] dated October 4, 2012 of the Regional Trial Court, First Judicial Region, Branch 30, San Fernando City, La Union in Criminal Case No. 8993 entitled “People of the Philippines, Plaintiff versus Efren Esteban y Pussan, Brendy Baludda y Dalmones, Jordan Paayas and Samuel Ujano y Baludda, Accused.”, the decretal portion of which reads:

“WHEREFORE, premises considered, the Court finds the accused EFREN ESTEBAN Y PUSSAN and BRENDY BALUDDA Y DALMONES guilty beyond reasonable doubt of the crime of Illegal transportation of marijuana pursuant to Section 5 Article II of Republic Act No. 9165 and sentences them to suffer the penalty of life imprisonment and to pay a fine of FIVE HUNDRED THOUSAND (Php500,000.00) PESOS.

With respect to accused SAMUEL UJANO y BALUDDA, the Court finds him to have acted without discernment thus exempting him from criminal liability and subject to an intervention program pursuant to Section 6 of R.A. No. 9344 as cited above.

SO ORDERED.”

The facts are:

On January 3, 2011, an Information[2] was filed before the RTC, San Fernando City, La Union charging accused-appellants Efren Esteban y Pussan (“Esteban” for brevity) and Brendy Baludda y Dalmones (“Baludda” for brevity) and accused Jordan Paayas (“Paayas” for brevity) with violation of Section 5, Article II of Republic Act No. 9165, also known and cited as the Comprehensive Dangerous Drugs Act of 2002, on Transportation of Dangerous Drugs. Accused-appellants Esteban and Baludda and accused Paayas were apprehended while Paayas remained at-large.

On February 1, 2011, the prosecution moved[3] for the admission of the Amended Information[4], which included Samuel B. Ujano (“Ujano” for brevity) as an accused and co-conspirator, and for the transfer of this case to the Family Court due to the minority of accused Ujano who was then sixteen (16) years of age.

On February 2, 2011, the RTC, Branch 26, San Fernando City, La Union granted[5] the prosecution's motion and ordered the transmittal[6] of the entire records of this case to RTC, Branch 30, San Fernando City, La Union (lower court for brevity), the designated Family Court, through the Office of the Clerk of Court.

Upon arraignment on March 4, 2011[7], accused-appellants Esteban and Baludda, assisted by counsel, Atty. Cristina Jenny Cariño, pleaded not guilty to the charge. On even date, the lower court issued an Order[8] granting the prosecution's motion to include the phrase “acting with discernment” after accused Ujano's name in the

second amended information and directing the prosecution to indicate the total quantity of marijuana confiscated from the accused.

On March 9, 2011, the Second Amended Information^[9] for Violation of Section 5, Article II of Republic Act No. 9165 was filed before the lower court, the accusatory portion of which reads:

“That on or about the 4th day of December, 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 one another, did then and there willfully, unlawfully, feloniously and knowingly, without being authorized by law, transport with the use of a Mitsubishi Delica Van bearing Plate Number BDA 785 registered in the name of Esteban Ujano the following, to wit:

One (1) blue sack bag containing four (4) bricks of marijuana fruiting tops weighing 2096.56 grams, 2037.95 grams, 2111.30 grams and 4100 grams;

One (1) green sack bag containing one brick of marijuana fruiting tops weighing 10400 grams;

One (1) cartoon (sic) box containing ten (10) bricks of marijuana fruiting tops weighing 2018.86 grams, 2046.30 grams, 2044.11 grams, 1973.32 grams, 1874.70 grams, 1997.06 grams, 2033.80 grams, 2072.69 grams, 2105.20 grams and 2081.13 grams;

One (1) carton box containing ten (10) bricks of marijuana fruiting tops weighing 2021.23 grams, 2027.34 grams, 1985.55 grams, 2069.46 grams, 2013.67 grams, 2124.10 grams, 2044.15 grams, 2014.56 grams, 2177.53 grams and 2115.69 grams;

One (1) carton box containing ten (10) bricks of marijuana fruiting tops weighing 2081.42 grams, 2051.01 grams, 2141.13 grams, 2067.45 grams, 2092.02 grams, 2130.72 grams, 2047.43 grams, 2080.46 grams, 2065.85 grams and 2041.10 grams.

One (1) brown sack bag containing six (6) bricks of marijuana fruiting tops weighing 877.65 grams, 2059.22 grams, 2033.35 grams, 2048.06 grams 2032.39 grams and 961.80 grams;

One (1) camouflage bag containing two (2) bricks of marijuana fruiting tops weighing 4900 grams and 5800 grams;

One (1) brown sack bag containing six (6) bricks of marijuana fruiting tops weighing 983.75 grams, 2013.96 grams, 2048.14 grams, 2017.12 grams, 2033.31 grams and 1031.64 grams;

One (1) sack containing ten (10) rolls of marijuana fruiting tops weighing 1022.54 grams, 1044.62 grams, 1064.33 grams, 1033.72 grams, 1044.85 grams, 1061.65 grams, 1063.95 grams, 1071.44 grams, 990.02 grams and 1061.82 grams;

One (1) sack containing ten (10) rolls of marijuana fruiting tops weighing 1074.03 grams, 1065.06 grams, 1044.25 grams, 1084.65 grams, 1023.19 grams, 1053.76 grams, 1049.90 grams, 1040.39 grams, 1028.76 grams and 1024.77 grams, all with a total weight of ONE HUNDRED THIRTY FOUR THOUSAND NINETY FOUR POINT NINETY FOUR (134,094.94) grams.

CONTRARY TO LAW.”

On March 25, 2011, when arraigned,^[10] accused Ujano, duly assisted by Atty. Cariño, pleaded not guilty to the charge.

On June 8, 2011, preliminary conference^[11] was held. The prosecution and the defense admitted the identities of accused Ujano and accused-appellants Esteban and Baludda, the existence of the initial and final chemistry report, and the fact that accused Ujano was a minor at the time the alleged offense was committed. However, the parties

disputed the following: their presence at San Gabriel, La Union and subsequent arrest of accused Ujano and accused-appellants Esteban and Baludda on December 4, 2010; the due execution of the initial and final chemistry report; and Esteban Ujano's ownership of the Delica Van with plate number BDA-785.

During the pre-trial conference,[12] the parties dispensed with the bringing of the subject marijuana by stipulating that the ten (10) sacks of marijuana indicated in the Certificate of Inventory were the very same pieces of evidence presented and marked during the preliminary conference and brought to the PNP Crime Laboratory for chemical examination.

Thereafter, trial ensued.

The prosecution presented Police Senior Inspector Bernardo Manzano ("Manzano" for brevity), Police Inspector Roanalaine Balicod ("Balicod" for brevity), SPO2 Stanley Campit ("Campit" for brevity), and Barangay Chairman Romeo Estolas, Jr. ("Estolas" for brevity) as witnesses.

P/SInsp. Manzano, Chief of Police of San Gabriel, La Union, testified[13] that: on December 3, 2010, at about 8:00 o'clock in the evening, a confidential informant reported to him via text message that a black and silver Mitsubishi Delica van bearing Plate No. BDA-785 would transport illegal drugs from the mountainous areas of Barangays Bayabas and Lon-oy to Poblacion, San Gabriel, La Union; he formed a team composed of SPO2 Campit, PO3 Lunes Pallayoc, PO3 Reynaldo Abalos, and PO3 Oscar Pasion to conduct a checkpoint at a well-lighted area in Sitio Buga, Bumbuneg, San Gabriel, La Union where the afore-described van would pass through at dawn[14] as per the informant's text message; he verbally coordinated the setting up of the said checkpoint with the Philippine Drug Enforcement Agency; the subject van could not go to the municipalities of San Juan and Bacnotan in La Union without passing through the place where he set up the checkpoint; on December 4, 2010 the police parked their patrol car on the shoulder of the road in front of a street light, set up a mobile checkpoint by putting up a barricade with a sign "PNP Checkpoint" between the areas of Barangays Bumbuneg and Siwsiwan Amontoc, and checked on all the vehicles going to and coming from the mountain; on December 4, 2010, at about 2:30 o'clock in the morning, he spotted the subject van at a distance of fifteen (15) meters away from the where the checkpoint was set up; the identities of persons to be apprehended were unknown to him; they flagged down the subject van which immediately stopped as it approached the checkpoint; the police operatives were alerted when a person came out from the right front door of the subject van and ran away; they shouted at the escaping person to freeze, but the same went unheeded; the police operatives no longer bothered to chase the escapee who jumped to a ravine going to a river; instead, they approached the subject van with rolled down window glasses, identified themselves as police officers to the three (3) remaining passengers whom they later on identified as accused-appellants Esteban and Baludda and accused Ujano; they asked the driver, accused-appellant Esteban, if there was anything loaded inside the subject van; accused-appellant Esteban gave a negative reply; the police conducted a visual search by training their flashlight at the inner portion of the subject van and found bricks of marijuana in transparent plastic packages which smelled marijuana; the police instructed accused-appellants Esteban and Baludda and accused Ujano to alight from the subject van, asked accused-appellant Esteban to open its rear door and discovered the numerous boxes, later found to contain marijuana; the police coordinated with Barangay Bumbuneg Chairman Estolas and Bombo Radyo announcer Nestor Ducusin, in their presence, opened the boxes and other containers at 3:00 o'clock in the morning, and found bricks of marijuana inside; the police placed accused-appellants Esteban and Baludda and accused Ujano under arrest after discovering the bricks, boxes and sacks of marijuana inside and took them to the police station; SPO2 Campit appraised accused-appellants Esteban and Baludda and accused Ujano of their constitutional rights; the police conducted an inventory at the crime scene by making a preliminary list of the confiscated items and marking them with his and the police investigator's signatures; after the inventory, the police returned the items in

the van, and one of them drove the van from Barangay Bumbuneg to the police station; agents of the PDEA and PAIDSOTG arrived an hour after they left the checkpoint for the police station; he only informed the PNP Provincial Director of La Union of the setting up of a checkpoint and the confiscation of marijuana after the police operation was conducted; SPO2 Campit prepared the typewritten certificate of inventory in the presence of P/SInsp. Manzano at the San Gabriel Police Station; likewise, SPO2 Campit blotted the incident; the police operatives executed affidavits of arrest; he personally submitted the letter-request for examination and delivered the confiscated items to the PNP Regional Crime Laboratory Office 1; and upon receipt of the laboratory examination result, he requested the Office of the Provincial Prosecutor of La Union to conduct inquest proceedings.

P/Insp. Balicod, Forensic Chemist, testified[15] that: on December 4, 2010 at 7:30 o'clock in the evening, she received a written request for dangerous drugs examination and the listed specimens consisting of dozens of bricks, which were either wrapped in newspaper and packaging tape or contained in sack bags, boxes, and camouflage bag, from P/SInsp. Manzano and recorded the said request in the incoming messages and dangerous drugs logbooks while she was on duty at Camp Brigadier General Oscar M. Florendo in Parian, San Fernando City, La Union; she and the elements of San Gabriel, La Union PNP and the Crime Laboratory Office inventoried the items which were loaded in the San Gabriel, La Union police patrol car and reflected in the request; it is possible to smell the odor of a marijuana specimen placed in a sealed container; the specimen delivered to her was partly exposed and emitted a marijuana odor; the pieces of evidence were brought inside the laboratory; she conducted a qualitative examination consisting of physical identification, screening, and confirmatory test; she physically identified the specimens taking note of their physical appearance and individually weighing them on the top loading analytical balance; in the screening or color test, she took a 0.5-gram sample from each of the thirty (30) bricks and conducted a Levine Duquenois and FBB tests; the solutions would turn violet in Levine Duquenois and a "few red, pink or peach" in FBB if the specimen is positive for marijuana; the screening test is only presumptive which is a mere basis to decide on whether or not to proceed with the confirmatory test; the results of her examination were placed in the Initial Laboratory Report and the Final Chemistry Report she prepared; the confirmatory examination results show that all specimens were positive for marijuana; she indorsed the specimens to custodian PO2 Jose Bucasas who brought them to the evidence room; and, the specimens were also brought to the lower court.

SPO2 Campit substantially corroborated P/SInsp. Manzano's testimony and further testified[16] that: accused-appellants Esteban and Baludda and accused Ujano disclosed to them the identity of accused Paayas as the man who came out of the subject van and jumped to the ravine; accused Paayas is still at-large; no one among them pursued accused Paayas because the ravine was high and it was so dark that they could not jump; and they opened and sliced the bricks found in the subject van, weighed them one after the other, and their suspicion was confirmed that the seized items were bricks of marijuana.

Estolas, Barangay Chairman of Barangay Bumbuneg, San Gabriel, La Union, testified[17] that: he was still asleep when P/SInsp. Manzano and SPO2 Campit came to his house in the early morning of December 4, 2010; after being awoken, P/Insp. Manzano and SPO2 Campit invited him to go to Sitio Buga, Barangay Bumbuneg, San Gabriel, La Union to see the quantity of marijuana seized by the police; upon arrival thereat, with Barangay Kagawad Miguel Crisostomo, he noticed the presence of accused-appellants Esteban and Baludda and accused Ujano at the waiting shed; he also saw the police officers in uniform and in civilian clothes; also present was Ducusin, he found the Delica van parked on the west bound side of the highway; he does not know the residences of accused-appellant Esteban and Baludda and accused Ujano; he saw the police weighing, documenting and loading back the marijuana into the subject van; he smelled the odor of the items as they were opened and weighed by the police and knew that they were marijuana because he is familiar with its odor; the seized

marijuana weighed a total of more or less one hundred twenty eight (128) kilograms; they proceeded to the San Gabriel Municipal Hall where the police unloaded the compressed bricks of marijuana from the subject van and brought them inside the police headquarters; and, he went home after he and Ducusin affixed their signatures at the Certificate of Inventory.

Accused-appellants Esteban and Baludda and accused Ujano testified and presented Susan Ujano as defense witness.

Susan Ujano testified[18] that: the Mitsubishi Delica van bearing Plate No. BDA-785 is registered in the name of her husband, Esteban Ujano; the Delica van was usually parked at her house in Parian, San Fernando, La Union; when her husband was jailed in Pasig City on May 1, 2009, she took over the operation of the subject van and rented it out; while she was staying in Baguio City on December 3, 2010, her daughter Mary Jane called and informed her that someone wanted to hire the subject van; on December 5, 2010, Mary Jane called her to come home; she proceeded to the San Gabriel Police Station where she learned from a police officer that the subject van was involved in the transportation of marijuana, it was used in bringing the accused to the provincial jail, and her son, accused Ujano, was sent home by the police; it was only on December 6, 2010 when she learned from accused Ujano that accused Paayas contacted him to hire the subject van in transporting bananas and gourds from San Gabriel to the public market in San Fernando City, La Union; and accused Ujano and accused-appellant Esteban told her that they did not know that accused Paayas and unidentified companions loaded marijuana leaves inside the subject van at Barangay Balbalayang, San Gabriel, La Union.

Accused Ujano[19] and accused-appellants Esteban[20] and Baludda[21] testified that: on December 3, 2010, accused Paayas went to see accused Ujano at the latter's house at Barangay Bayabas, San Gabriel, La Union to hire the subject van; accused Ujano did not inform his mother Susan and his siblings about his transaction with accused Paayas because he intended to keep the P2,000.00 rental for himself in order to buy clothes; accused-appellant Esteban had been driving for the Ujano Family for more than two (2) years; in the afternoon of December 3, 2010, accused-appellant Esteban came from La Trinidad, Benguet and was supposed to go to San Gabriel, La Union to visit his parents when his friend, accused Ujano, called informing him that accused Paayas rented the subject van to transport bananas and vegetables from Barangay Balbalayang, San Gabriel, La Union to the public market in San Fernando City, La Union; accused-appellant Esteban acceded to accused Ujano's request to drive the subject van for accused Paayas for an unusually higher amount of P500.00; during all the time that accused-appellant Esteban was driving for the Ujano Family, the subject van was transporting passengers; that was the first time that he drove it with bananas and vegetables inside; accused-appellant Esteban proceeded to the Ujano residence at Parian, San Fernando City, La Union to check if the subject van was in good condition; accused-appellant Esteban and accused Ujano left San Fernando City, La Union at 8:00 o'clock in the evening to pick up accused Paayas at San Gabriel, La Union; meanwhile, accused-appellant Baludda, a resident of Sasaba, Santol, La Union, went to Balbalayang National High School, where his son Willy was studying, to attend the parents' meeting thereat; accused-appellant Esteban and accused Ujano arrived at Barangay Balbalayang, San Gabriel, La Union at past 9:00 o'clock in the evening; accused-appellant Baludda approached and asked accused Ujano if he could hitch a ride; accused Ujano assented and told accused-appellant Baludda that accused Paayas hired the subject van in going to San Fernando City, La Union; accused-appellant Baludda went to the boarding house where his son was staying to get his bag and to tell the latter that he was going to Rosario, La Union to visit his sick mother; accused-appellant Esteban and accused Ujano sat in front while accused-appellant Baludda sat at the back; accused-appellant Baludda told accused-appellant Esteban that he would alight at San Fernando City, La Union and take a bus in going to Rosario, La Union; they waited for accused Paayas to arrive and fell asleep inside the Delica van for three (3) to four (4) hours; accused Paayas finally arrived, roused accused Ujano from his sleep, and told the latter to unlock the rear door of the subject van; accused Ujano did not recognize accused

Paayas' companions; he did not notice how the items were loaded inside the subject van because the place was dark; when the items were already loaded inside the subject van and accused Paayas' companions already left, accused-appellant Esteban woke up and subsequently started the engine of the subject van; accused Paayas sat beside accused-appellant Esteban while accused Ujano transferred at the back beside accused-appellant Baludda who woke up when they were moving; accused Paayas gave the directions to accused-appellant Esteban and told him where the items would be taken; accused-appellant Esteban did not inquire about the items loaded in the subject van; they no longer inspected the items because they relied on accused Paayas' representation that they were bananas; they did not smell anything unusual inside the subject van because its windows were open; accused-appellant Esteban suspected something unusual with accused Paayas after waiting at night for his arrival for a long time, and noticed accused Paayas' silence and alertness during the trip; a police patrol car which came from the direction of Poblacion, San Gabriel, La Union blocked the path of the subject van at Sitio Buga, Barangay Bumbuneg, San Gabriel, La Union while they were traversing the road from Barangay Balbalayang, San Gabriel going to San Fernando City, La Union; there was no checkpoint across the road and the place was somewhat dark

because the street lights were far from each other; accused-appellant Esteban stopped the subject van and after accused Paayas uttered something inaudible, he suddenly opened the door, and jumped off a ravine going towards the river; due to accused-appellant Esteban's vicarious experience about vehicles being apprehended for transporting contraband, it occurred to his mind that the police were present because they were transporting contraband; around six (6) policemen in uniform and in civilian clothes approached them, pointed their guns at accused-appellant Esteban, told them to alight from the subject van, lie with face down on the ground, and placed handcuffs at them; accused-appellant Esteban did not notice if the police officers who approached them had flashlights; the police did not ask them what was inside the subject van; the police did not seek their permission when they opened the rear door of the subject van, immediately inspected the items inside, and told them that they would be arrested because the items that they were carrying contained marijuana; after the arrival of barangay officials at the scene of the incident, they were taken aboard the police patrol car to the police station where they were detained for three (3) days; no media personality was present when they were arrested; the police loaded back the items into the subject van and brought them to the police station; they did not see the police make an inventory of the seized items because they were still in a lying position with face on the ground; had accused-appellant Esteban known that the items being transported contained marijuana, he would have fled; they could not see the contents because they were placed in bags; the items were unloaded from the subject van and brought inside the police station; accused-appellant Esteban was already detained at the provincial jail when he told Susan Ujano that he was only hired to drive the subject van and had no knowledge about the contents of the boxes/sacks; and the police showed accused Ujano the items discovered inside the subject van at the time they were unloaded at the municipal hall.

On October 4, 2012, the lower court rendered the assailed decision convicting accused-appellants Esteban and Baludda of the crime charged.

Hence, this appeal with this lone assignment of error:

“THE COURT A QUO GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANTS GUILTY OF VIOLATION OF SECTION 5, ARTICLE II, REPUBLIC ACT NO. 9165 DESPITE THE PROSECUTION'S FAILURE TO PROVE THEIR GUILT BEYOND REASONABLE DOUBT.”

Accused-appellants Esteban and Baludda contend that: there was no probable cause to search and arrest them because the subject items (marijuana) were not in plain view; the marijuana bricks were not visible to the police manning the checkpoint because they were wrapped in masking tape and placed inside packages and boxes; and, a

more extensive search is not warranted because they did not act suspiciously.

On the other hand, the prosecution contends that the existence of probable cause to believe on the part of the police that accused-appellants Esteban and Baludda committed a crime justified their warrantless arrest.

This makes a case of warrantless search of a moving vehicle instead of a search and seizure based on “plain view” doctrine.

“The general rule is that a search may be conducted by law enforcers only on the strength of a search warrant validly issued by a judge as provided in Section 2, Article III of the 1987 Constitution, thus:

“The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant and warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.”

The constitutional guarantee is not a blanket prohibition against all searches and seizures as it operates only against “unreasonable” searches and seizures. Searches and seizures are as a rule unreasonable unless authorized by a validly issued search warrant or warrant of arrest. Thus, the fundamental protection accorded by the search and seizure clause is that between persons and police must stand the protective authority of a magistrate clothed with power to issue or refuse to issue search warrants and warrants of arrest.

Be that as it may, the requirement that a judicial warrant must be obtained prior to carrying out a search and seizure is not absolute. There are certain exceptions to the rule, one of which relates to search of moving vehicles. Warrantless search and seizure of moving vehicles are allowed in recognition of the impracticability of securing a warrant under said circumstances as the vehicle can be quickly moved out of the locality or jurisdiction in which the warrant may be sought. Peace officers in such cases, however, are limited to routine checks where the examination of the vehicle is limited to visual inspection.”[22]

“Searches conducted in checkpoints are valid for as long as they are warranted by the exigencies of public order and are conducted in a way least intrusive to motorists. For as long as the vehicle is neither searched nor its occupants subjected to a body search, and the inspection of the vehicle is limited to a visual search, said routine checks cannot be regarded as violative of an individual's right against unreasonable search.”[23]

On the other hand, the “plain view” doctrine usually applies in a situation where the police officer is not searching for evidence against the accused, but nonetheless inadvertently comes upon an incriminating object.[24]

In this case, probable cause was proven by the prosecution. Records show that P/SInsp. Manzano upon receipt of a tip from a confidential informant at 8:00 o'clock in the evening of December 3, 2010 that a Mitsubishi Delica van with plate number BDA-785 would transport illegal drugs from the mountainous areas of Barangays Bayabas and Lon-oy to its final destination at Poblacion passing through Barangay Bumbuneg at dawn, immediately composed a team to conduct a checkpoint which spotted the subject van at a checkpoint at 2:30 o'clock in the morning of December 4, 2010. Accused Paayas immediately came out of the subject van, ran and jumped into a ravine. The items inside the subject van emitted marijuana odor emanating from its open windows which the policemen were able to smell, contrary to the reply of accused-appellant Esteban that there was nothing inside. All these justified a reasonable belief on the part of the police officers that accused-appellants Esteban and Baludda were violating the law and that the contents of the subject van were instruments or subject of the offense and warranted an extensive search on the subject van.

Probable cause has been defined as such facts and circumstances which could lead a reasonable, discreet and

prudent person to believe that an offense has been committed, and that the objects sought in connection with the offense are in the place sought to be searched. The required probable cause that will justify a warrantless search and seizure is not determined by any fixed formula but is resolved according to the facts of each case.[25]

The Supreme Court held that there was probable cause in the following instances: (a) where the distinctive odor of marijuana emanated from the plastic bag carried by the accused; (b) where an informer positively identified the accused who was observed to be acting suspiciously; (c) where 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 quantity of marijuana; (d) where Narcom agents 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 on his waistline, he failed to present his passport and other identification papers when requested to do so; (f) 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 syndicate to which the accused belong — that said accused were bringing prohibited drugs into the country; (g) where the arresting officers had received a confidential information that the accused, whose identity as a drug distributor was established in a previous test-buy operation, would be boarding MV Dona Virginia and probably carrying shabu with him; (h) where police officers received an information that the accused, who was carrying a suspicious-looking gray luggage bag, would transport marijuana in a bag to Manila; and (i) where the appearance of the accused and the color of the bag he was carrying fitted the description given by a civilian asset.[26]

When a vehicle is stopped and subjected to an extensive search, such would be constitutionally permissible only if the officers make it upon probable cause, i.e., upon a belief, reasonably arising out of circumstances known to the seizing officer that an automobile or other vehicle contains item, article or object which by law is subject to seizure and destruction.[27]

Although the general rule is that motorists and their vehicles as well as pedestrians passing through checkpoints may only be subjected to a routine inspection, vehicles may be stopped and extensively searched when there is probable cause which justifies a reasonable belief of the persons at the checkpoints that either the motorist is a law offender or the contents of the vehicle are or have been instruments of some offense.[28]

Accused-appellant Esteban and Baludda further contend that there is a noticeable significant break in the chain of custody of the seized items. It took thirty (30) minutes for the police to finish the inventory of what P/SInsp. Manzano claimed to be fifty (50) packages discovered inside the subject van. There was no PDEA agent present when the inventory was conducted. No one testified with regard to the manner by which the items were brought back to the subject van after the inventory, and P/SInsp. Manzano could not recall the identity of the police officer and checkpoint team member who drove the subject van at the time the items were transported to the police station. There was no previous information implicating them in illegal drug activities other than the one supplied by the confidential informant to P/SInsp. Manzano, neither were they subjected to any surveillance nor listed in the police watchlist before their arrest. There was no coordination made with the PNP Provincial Director of La Union as regards the setting up of the checkpoint. P/Insp. Balicod did not personally know the source of the items subjected to examination. P/Insp. Balicod indorsed the items to the evidence custodian, PO2 Bucasas, after they were weighed and examined, yet the prosecution did not present PO2 Bucasas as witness during the trial.

On the other hand, the prosecution contends that the chain of custody was sufficiently established. The marijuana bricks were marked with P/SInsp. Manzano and SPO2 Campit's initials "BCM" and "SRC" at the place where accused-appellants Esteban and Baludda were arrested. SPO2 Campit made an inventory of the subject van and the recovered marijuana bricks and brought accused-appellants Esteban and Baludda, the subject van, and the

marijuana bricks to the police station. Likewise, SPO2 Campit prepared the letter-request for laboratory examination. P/SInsp. Manzano and SPO2 Campit personally delivered the letter-request and the recovered bricks of marijuana to the PNP Crime Laboratory and handed them to forensic chemist P/Insp. Balicod. The pieces of evidence recovered by the police were subjected to qualitative examination and found positive for marijuana, a prohibited drug. The items recovered from accused-appellants Esteban and Baludda and accused Ujano were the very same items subjected to laboratory examination and presented as evidence to the lower court. Records show no break in the chain of custody over the marijuana seized from accused-appellants Esteban and Baludda and accused Ujano.

The police observed the mandatory procedure of marking, taking photographs[29], and inventorying[30] of the seized marijuana in the presence of an elected public official and a media representative, namely: Barangay Chairman Estolas and Bombo Radyo announcer Ducusin at the place where accused-appellants Esteban and Baludda and accused Ujano were arrested.

The specimens, marked with the initials "SRC" and "BCM" and placed back in the same bags, sacks and boxes where they were found during the seizure, were delivered by P/SInsp. Manzano and received[31] by P/Insp. Balicod at the PNP Crime Laboratory on December 4, 2010 at 7:30 o'clock in the morning. Chemistry Report No. D-099-10[32] dated December 5, 2010 shows that the qualitative examination on the specimens yielded positive for marijuana.

PO2 Bucasas' alleged failure to testify in court did not undermine the case for the prosecution in the same manner that the non-presentation of the forensic chemist in illegal drug cases is an insufficient cause for acquittal and the laboratory analyst's testimony has nothing to do with the corpus delicti in criminal cases on prohibited drugs.

Moreover, the prosecution and the defense had already stipulated during the pre-trial conference that the sacks of marijuana indicated in the Certificate of Inventory were the very same pieces of evidence brought to the PNP Crime Laboratory for chemical examination, presented to the court and marked during the preliminary conference.

"To prove the corpus delicti, the prosecution must show that the dangerous drugs seized from the accused and subsequently examined in the laboratory are the same dangerous drugs presented in court as evidence to prove their guilt. To ensure that this is done right and that the integrity of the evidence of the dangerous drugs is safeguarded, Congress outlined in Sec. 21 of R.A. No. 9165 the mandatory procedure that law enforcers must observe following the seizure of such substance:

(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;

Also, Sec. 21 (a) of the IRR of R.A. 9165 provides the following:

(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;

Clearly, the Congress and the Executive Department demand strict compliance with the above requirements. It is only by such strict compliance that the grave mischiefs of planting evidence or substituting it may be eradicated. Such strict compliance is also consistent with the doctrine that penal laws shall be construed strictly against the government and liberally in favor of the accused.

“The first stage after seizure is the taking of inventory of the dangerous drugs seized from the suspect. It begins with the marking of the seized objects to fix its identity. Such marking should be made as far as practicable in the presence of the suspect immediately upon his arrest. Of course, the failure to mark the seized items at the place of arrest does not by 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, especially when the place of seizure is volatile and could draw unpredictable reactions from its surroundings.”[33]

“Two. The law requires the apprehending officer or team to conduct a physical inventory of the seized items and take photograph of the same in the presence of the accused, 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 copies of the same.”[34]

“The Supreme Court has of course held that non-compliance with the procedural safeguards provided in Sec. 21 of R.A. 9165 and its IRR would not necessarily void the seizure and custody of the dangerous drugs for as long as there is a justifiable ground for it and the integrity and the evidentiary value of the seized items are properly preserved.”[35]

The different links that the prosecution must establish with respect to the chain of custody are: (1) the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; (2) the turnover of the illegal drug seized by the apprehending officer to the investigating officer; (3) the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and (4) the turnover and submission of the marked illegal drug seized by the forensic chemist to the court.[36]

As regards the alleged absence of a PDEA agent during the inventory by the police in this case, the ruling in *People vs. Sta. Maria*³⁷ is instructive, thus:

“Section 86 of Republic Act No. 9165 reads:

SEC. 86. Transfer, Absorption, and Integration of All Operating Units on Illegal Drugs into the PDEA and Transitory Provisions. — The Narcotics Group of the PNP, the Narcotics Division of the NBI and the Customs Narcotics Interdiction Unit are hereby abolished; however they shall continue with the performance of their task as detail service with the PDEA, subject to screening, until such time that the organizational structure of the Agency is fully operational and the number of graduates of the PDEA Academy is sufficient to do the task themselves: Provided, That such personnel who are affected shall have the option of either being integrated into the PDEA or remain with their original mother agencies and shall, thereafter, be immediately reassigned to other units therein by the head of such agencies. Such personnel who are transferred, absorbed and integrated in the PDEA shall be extended appointments to positions similar in rank, salary, and other emoluments and privileges granted to their respective positions in their original mother agencies.

The transfer, absorption and integration of the different offices and units provided for in this Section shall take effect within eighteen (18) months from the effectivity of this Act: Provided, That personnel absorbed and on detail service shall be given until five (5) years to finally decide to join the PDEA.

Nothing in this Act shall mean a diminution of the investigative powers of the NBI and the PNP on all other

crimes as provided for in their respective organic laws: Provided, however, That when the investigation being conducted by the NBI, PNP or any ad hoc anti-drug task force is found to be a violation of any of the provisions of this Act, the PDEA shall be the lead agency. The NBI, PNP or any of the task force shall immediately transfer the same to the PDEA: Provided, further, That the NBI, PNP and the Bureau of Customs shall maintain close coordination with the PDEA on all drug related matters.”

Cursory read, the foregoing provision is silent as to the consequences of failure on the part of the law enforcers to transfer drug-related cases to the PDEA, in the same way that the Implementing Rules and Regulations (IRR) of Republic Act No. 9165 is also silent on the matter. But by no stretch of imagination could this silence be interpreted as a legislative intent to make an arrest without the participation of PDEA illegal nor evidence obtained pursuant to such an arrest inadmissible.

It is a well-established rule of statutory construction that where great inconvenience will result from a particular construction, or great public interests would be endangered or sacrificed, or great mischief done, such construction is to be avoided, or the court ought to presume that such construction was not intended by the makers of the law, unless required by clear and unequivocal words.

As we see it, Section 86 is explicit only in saying that the PDEA shall be the "lead agency" in the investigations and prosecutions of drug-related cases. Therefore, other law enforcement bodies still possess authority to perform similar functions as the PDEA as long as illegal drugs cases will eventually be transferred to the latter. Additionally, the same provision states that PDEA, serving as the implementing arm of the Dangerous Drugs Board, "shall be responsible for the efficient and effective law enforcement of all the provisions on any dangerous drug and/or controlled precursor and essential chemical as provided in the Act." We find much logic in the Solicitor General's interpretation that it is only appropriate that drugs cases being handled by other law enforcement authorities be transferred or referred to the PDEA as the "lead agency" in the campaign against the menace of dangerous drugs. Section 86 is more of an administrative provision. By having a centralized law enforcement body, i.e., the PDEA, the Dangerous Drugs Board can enhance the efficacy of the law against dangerous drugs. To be sure, Section 86 (a) of the IRR emphasizes this point by providing:

“(a) Relationship/Coordination between PDEA and Other Agencies — The PDEA shall be the lead agency in the enforcement of the Act, while the PNP, the NBI and other law enforcement agencies shall continue to conduct anti-drug operations in support of the PDEA Provided, finally, that nothing in this IRR shall deprive the PNP, the NBI, other law enforcement personnel and the personnel of the Armed Forces of the Philippines (AFP) from effecting lawful arrests and seizures in consonance with the provisions of Section 5, Rule 113 of the Rules of Court.”

Accused-appellant Esteban and Baludda finally contend that: they did not conspire to transport marijuana; they stayed put and did not try to escape the way accused Paayas did after seeing the checkpoint even if they had the opportunity to do so; they were unaware that they were transporting marijuana; accused-appellant Esteban was just doing his job as driver the subject van for accused Ujano who hired his services as such and for accused Paayas who hired the subject van from accused Ujano; and, accused-appellant Baludda merely hitched a ride on the subject van.

In comparison to the prosecution's evidence, all that accused-appellants Esteban and Baludda could muster is the defense of denial.

Denial has been viewed with disfavor for it can just as easily be concocted and is a common and standard defense ploy in most prosecutions for violation of Dangerous Drugs Act. The defense of denial in drug cases requires strong and convincing evidence because of the presumption that the law enforcement agencies acted in the regular performance of their official duties. Bare denial of accused-appellants Esteban and Baludda cannot prevail over

the positive testimonies of prosecution witnesses.

Accused-appellants Esteban and Baludda failed to satisfactorily establish their innocence in this case.

Accused-appellant Esteban admitted that he already suspected something unusual about accused Paayas when they were made to wait for him for an indefinite period of time in the night. He also noticed accused Paayas' tacit and alert behavior during the trip and yet he and accused-appellant Baludda did not show the slightest curiosity to inquire and inspect the cargoes loaded in the subject van. They took at face value accused Paayas' representation that what was inside the packages were bananas and vegetables notwithstanding the fact that accused Paayas was a stranger and the delivery of the items was to a very distant place and at an unholy hour.

It only occurred to accused-appellant Esteban's mind that they were transporting contraband when he allegedly saw the police flagging them down.

Accused-appellant Esteban further alleged that if indeed he knew about the contents of their cargo, he would have fled.

At the time the police manning the checkpoint were approaching the subject van where accused-appellants Esteban and Baludda and accused Ujano remained on board, there was no way that they could have evaded the arrest without their lives being placed in jeopardy. They decided to just brazen it out with the police and insist on their version of the story.

Well-settled is the rule that evidence to be believed, must not only proceed from the mouth of a credible witness but it must be credible itself. No better test has yet been found to measure the value of a witness than its conformity to the knowledge and common experience of humankind.[38]

In the ordinary course of things, one is expected to inquire about the contents of a wrapped package especially when it is a mere acquaintance who requests the delivery and, more so, when delivery is to a place some distance away.[39]

In criminal cases involving prohibited drugs, there can be no conviction unless the prosecution shows that the accused knowingly possessed the prohibited articles in his person, or that animus possidendi is shown to be present together with his possession or control of such article. Animus possidendi is only prima facie. It is subject to contrary proof and may be rebutted by evidence that the accused did not in fact exercise power and control over the thing in question, and did not intend to do so. The burden of evidence is thus shifted to the possessor to explain absence of animus possidendi.[40]

Knowledge refers to a mental state of awareness of a fact. Since courts cannot penetrate the mind of an accused and thereafter state its perceptions with certainty, resort to other evidence is necessary. Animus possidendi, as a state of mind, may be determined on a case-to-case basis by taking into consideration the prior or contemporaneous acts of the accused, as well as the surrounding circumstances. Its existence may and usually must be inferred from the attendant events in each particular case.[41]

WHEREFORE, premises considered, the Decision dated October 4, 2012 of the RTC, Branch 30, San Fernando City, La Union in Criminal Case No. 8993 is hereby AFFIRMED.

SO ORDERED.

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

Bruselas, A.D., JR., and Gaerlan, S.H., JJ., concur.

[1] Records, pp. 213-231

[2] Records, pp. 1-2

[3] Records, p. 34

[4] Records, pp. 35-36

[5] Records, p. 42

[6] Records, p. 43

[7] Records, p. 48

[8] Records, p. 47

[9] Records, pp. 53-54

[10] Records, p. 57

[11] Records, pp. 69-77

[12] Records, p. 78

[13] TSN dated June 29, 2011 and July 27, 2011

[14] 1:00, 3:00 or 4:00 o'clock in the morning

[15] TSN dated July 6, 2011

[16] TSN dated August 3, 2011 and August 10, 2011

[17] TSN dated August 31, 2011

[18] TSN dated December 2, 2011

[19] TSN dated April 25, 2012

[20] TSN dated December 7, 2011 and December 9, 2011

[21] TSN dated January 11, 2012 and March 7, 2012

[22] People vs. Libnao, G.R. No. 136860, January 20, 2003

[23] People vs. Vinecario, G.R. No. 141137, January 20, 2004

[24] Nachura, Outline/Reviewer in Political Law, 2006 Edition, p. 132 citing People vs. Musa, 217 SCRA 597

[25] Ibid.

[26] People vs. Libnao, supra.

- [27] People vs. Libnao, supra.
- [28] People vs. Vinecario, supra.
- [29] Records, p. 19
- [30] Records, pp. 137-141
- [31] Records, p. 143
- [32] Records, pp. 144-145
- [33] People vs. Bautista, G.R. No. 198113, December 11, 2013
- [34] Ibid.
- [35] Ibid.
- [36] People vs. Arriola, G.R. No. 187736, February 8, 2012
- [37] G.R. No. 171019, February 23, 2007
- [38] People vs. Maspil, 188 SCRA 751
- [39] People vs. Peñaflorida, G.R. No. 175604, April 10, 2008
- [40] Ibid.
- [41] Ibid.

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