

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JAIME PAUT Y BAGAY, ACCUSED-APPELLANT.

Ponente: LAMPAS PERALTA, J.

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LAMPAS PERALTA, J.:

Before the Court is an appeal[1] from the Decision dated November 20, 2013[2] in Criminal Cases Nos. 193-12 and 194-12 of Branch 75, Regional Trial Court, Olongapo City, finding accused-appellant Jaime Paut y Bagay guilty beyond reasonable doubt, in both cases, of violation of Section 5[3], Article II, Republic Act No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

THE ANTECEDENTS

Pursuant to reports on accused-appellant's alleged illegal drug activities from Baguio City to Olongapo City and other neighboring provinces, PO2 Ferdinand Mataverde and a confidential agent engaged themselves in “undercover operations” on two occasions. First, on March 21, 2012, when the confidential agent introduced PO2 Ferdinand Mataverde to accused-appellant as a friend. PO2 Ferdinand Mataverde heard accused-appellant telling the confidential agent about a drug delivery during that week. The second occasion was on March 25, 2012, when accused-appellant offered PO2 Ferdinand Mataverde a kilogram of marijuana for sale on consignment basis. Accused-appellant promised to deliver a kilogram of marijuana to PO2 Ferdinand Mataverde the following day. PO2 Ferdinand Mataverde reported the matter to Police Senior Chief Inspector Julius A. Jimenez.[4]

On March 26, 2012, around 10:00 A.M., an entrapment operation was conducted by the members of the City Anti-Illegal Drugs Special Operation Team (CAIDSOT) and the Philippine Drug Enforcement Agency (PDEA) Olongapo-Zambales team. Police Senior Chief Inspector Julius A. Jimenez was the group's team leader, PO2 Ferdinand Mataverde was the poseur-buyer and PDEA agent William M. Dulay was PO2 Ferdinand Mataverde's back-up officer. Other members of the team included SPO2 Allan delos Reyes, “PO2 Jaudian”, “PO2 Moran”, “PO2 Cruz”, “PO1 Mascarina” and a PDEA agent.[5]

PO2 Ferdinand Mataverde went to the designated place of operation at No. 38, 23rd Street, West Bajac-Bajac, Olongapo City. Accused-appellant arrived with a black backpack. PO2 Ferdinand Mataverde and accused-appellant went to a compound where accused-appellant opened his backpack, pulled out a brick of suspected marijuana fruiting tops wrapped in newspaper and tape and handed the same to PO2 Ferdinand Mataverde. Sensing the presence of other operative members, accused-appellant immediately ran out of the compound.[6]

PO2 Ferdinand Mataverde and agent William M. Dulay pursued accused-appellant who boarded a tricycle and later boarded a Victory Liner bus with body number 1021 heading for Zambales. On board a police car, PO2 Ferdinand Mataverde and agent William M. Dulay followed the bus until it stopped at a gas station to unload passengers. PO2 Ferdinand Mataverde and agent William M. Dulay apprehended accused-appellant. Agent William M. Dulay recovered accused-appellant's black backpack which contained seven (7) bricks of suspected marijuana fruiting tops.[7]

PO2 Ferdinand Mataverde and agent William M. Dulay brought accused-appellant and the seized items to the police station where PO2 Ferdinand Mataverde marked with his initials, “FM”, the suspected marijuana brick that was first delivered to him by accused-appellant. Agent William M. Dulay marked with his initials, “WMD”, the seven (7) suspected marijuana bricks recovered from accused-appellant's black backpack. The markings of the seized items were done in the presence of accused-appellant and representatives from the barangay, media and the Department of Justice (DOJ).[8]

After the marking of the eight (8) suspected marijuana bricks, the same were turned over on March 26, 2012 to investigator SPO2 Allan delos Reyes who marked the items with his initials, “ADR”. SPO2 Allan delos Reyes prepared the inventory receipt and request for laboratory examination and delivered on the same day the seized items to Olongapo City Crime Laboratory Office. The laboratory examination conducted over the 8 suspected marijuana bricks yielded positive result for marijuana.[9]

For his part, accused-appellant claims that he was waiting for a bus at the Victory Liner terminal to take him to his home in Kalinga Apayao when two men in uniform handcuffed him and brought him to the police station where he was shown his own bag containing 8 bricks of marijuana. Accused-appellant told the police that his bag contained 8 pieces of children's clothes he bought for his children before said bag was taken from him by the police.[10]

Two (2) separate criminal informations[11] for violation of Section 5, Article II, R.A. No. 9165 were filed against accused-appellant, the accusatory portions of which read:

Criminal Case No. 193-2012 (For: “Sale and Delivery of Dangerous Drugs”)

The undersigned accuses Jaime Paut y Bagay of Violation of Section 5, Article II of RA 9165, committed as follows:

The undersigned accuses Jaime Paut y Bagay of Violation of Section 5, Article II of RA 9165, committed as follows: That on or about the twenty-sixth (26th) day of March, 2012, in the City of Olongapo, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without being lawfully authorized, did then and there willfully, unlawfully and knowingly sell and deliver to PO2 Ferdinand Mataverde one (1) brick of Marijuana fruiting tops, a dangerous drug, weighing One Thousand Grams (1,000) wrapped in newspaper and masking tape with markings “EXH-'A', FM, ADR”.

CONTRARY TO LAW: (sic)

Criminal Case No. 194-2012 (For: “Transportation of Dangerous Drugs”)

The undersigned accuses Jaime Paut y Bagay of Violation of Section 5, Article II of RA 9165, committed as follows:

That on or about the twenty-sixth (26th) day of March, 2012, in the City of Olongapo, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without being lawfully authorized, did then and there willfully, unlawfully and knowingly transport in the Victory Liner Bus with plate number CXK-958 and body number 1021 travelling along the National Highway, Bo. Barreto, Olongapo City, seven (7) bricks of Marijuana fruiting tops, a dangerous drug, weighing Six Thousand Eight Hundred Fifty Grams (6,850) wrapped in newspaper and masking tape with markings “EXH-'B-1' to “EXH-'B-7', WMD, ADR”.

CONTRARY TO LAW: (sic)

Upon arraignment on April 26, 2012, accused-appellant pleaded “not guilty” to both charges.[12] During the pre-trial conference on June 5, 2012, the parties stipulated on the identity of accused-appellant and the prosecution pre-marked its exhibits.[13]

Trial ensued. The prosecution presented PO2 Ferdinand Mataverde,[14] PDEA agent William M. Dulay[15] and SPO2 Allan delos Reyes[16] as witnesses. The testimony of Forensic Chemist/Police Senior Inspector Maria Cecilia G. Tang was dispensed with pursuant to the parties' stipulations.[17] The defense presented accused-appellant[18] as its sole witness.

In a Decision dated November 20, 2013, the trial court convicted accused-appellant of violation of Section 5, Art. II, R. A. No. 9165 and sentenced him as follows:

WHEREFORE, judgment is rendered as follows:

1. In Criminal Case No. 193-12, the Court finds JAIME PAUT y BAGAY GUILTY beyond reasonable doubt of Violation of Sec. 5, RA 9165 and sentences him to suffer the penalty of life imprisonment and to pay a fine of P500,000.00 plus cost, without subsidiary imprisonment in case of insolvency; and
2. In Criminal Case No. 194-12, the Court finds JAIME PAUT y BAGAY GUILTY beyond reasonable doubt of Violation of Sec. 5, RA 9165 and sentences him to suffer the penalty of life imprisonment and to pay a fine of P500,000.00 plus cost, without subsidiary imprisonment in case of insolvency;

The accused shall also suffer the accessory penalties under Section 35, RA 9165 and shall be credited in the service of his sentence with the full time during which he has undergone preventive imprisonment subject to the conditions imposed under Art. 29 of the Revised Penal Code as amended.

The marijuana bricks marked Exhs. "H" to "H-7" of the Prosecution are ordered confiscated in favor of the government and to be disposed of in accordance with law.

SO DECIDED.[19]

Hence, accused-appellant filed the present appeal which is premised on the following assignment of errors:

I

THE TRIAL COURT GRAVELY ERRED IN GIVING FULL WEIGHT AND CREDENCE TO THE PROSECUTION'S EVIDENCE NOTWITHSTANDING ITS FAILURE TO PROVE THE IDENTITY AND INTEGRITY OF THE ALLEGEDLY SEIZED DRUGS.

II

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE THE PROSECUTION'S FAILURE TO ESTABLISH EVERY LINK IN THE CHAIN OF CUSTODY OF THE SEIZED ITEMS.

III

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE THE PREVAILING IRREGULARITIES IN THE APPREHENDING OFFICERS' PERFORMANCE OF THEIR OFFICIAL DUTIES AND THE PROSECUTION'S FAILURE TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.[20]

THE ISSUE

Whether the trial court erred in finding accused-appellant guilty beyond reasonable doubt of violation of Section 5, R. A. No. 9165 in both Criminal Cases Nos. 193-12 and 194-12.

THE COURT'S RULING

The present appeal is premised on the arguments that (i) the prosecution failed to prove the corpus delicti of the crimes charged against accused-appellant due to the arresting officers' failure to preserve the integrity and

evidentiary value of the seized dangerous drugs; (ii) there were existing gaps as to the identities of the persons who handled the seized items from the time of their confiscation up to the release of the same after they passed through laboratory examinations; (iii) the belated markings of the seized items could not be overlooked; (iv) given the lapse of time from the confiscation of the seized items and their markings, the marijuana bricks became susceptible to manipulation and replacement; (v) there was no detail as to who received the specimens at the crime laboratory; and, (vi) the forensic chemist had no personal knowledge as to the origin of the seized items.[21]

The asseverations are unfounded.

Section 5, Article II, R. A. No. 9165 provides:

Sec. 5. Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals. — The penalty of life imprisonment to death and a fine ranging from Five Hundred Thousand pesos (Php500,000.00) to Ten Million pesos (Php10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute dispatch in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions.

In a prosecution for the crime of illegal sale of dangerous drugs under Section 5, Article II, R. A. No. 9165, the following elements must concur: (i) the identities of the buyer and seller, object, and consideration, and (ii) the delivery of the thing sold and the payment thereof. What is material to the prosecution for illegal sale of dangerous drugs is the proof that the transaction or sale actually occurred, coupled with the presentation in court of the substance seized as evidence.[22]

Moreover, in illegal sale, what the prosecution needs to present is proof that a transaction or sale actually took place, coupled with the presentation in court of evidence of the corpus delicti. The commission of illegal sale merely requires the consummation of the selling transaction, which happens the moment the buyer receives the drug from the seller. As long as the police officer went through the operation as a buyer, whose offer was accepted by the accused, followed by the delivery of the dangerous drugs to the former, the crime is already consummated.[23]

With respect to "transport" of dangerous drugs under Section 5, Article II, R. A. No. 9165, the same is defined to mean "to carry or convey from one place to another." The essential element of the charge is the movement of the dangerous drug from one place to another.[24]

There is no question that accused-appellant was apprehended as a result of a police entrapment operation. Entrapment is the employment of such ways and means for the purpose of trapping or capturing a lawbreaker.[25] The operation is legal and has been proved to be an effective method of apprehending drug peddlers, provided that due regard to constitutional and legal safeguards is undertaken.[26]

The prosecution positively established the presence of all the essential elements of illegal sale of dangerous drugs in Criminal Case No. 193-12, as well as transportation of dangerous drugs in Criminal Case No. 194-12. As PO2 Ferdinand Mataverde testified:

On direct examination:

Q So what happened on the following day March 26, 2012 at 9:00 o'clock in the morning?

A The following day we conducted a briefing and coordinated with the PDEA.

Q And what was the plan?

A That we are going to conduct a buy bust operation against Jaime Paut.

Q And what was and who are these persons who would conduct the operation?

A CAIDSOT maam and Olongapo/Subic Team of PDEA.

Q Were you part of the operation?

A Yes maam.

Q And what was your role in that buy bust operation?

A I am supposed to be the poseur buyer.

Q And where there other police officers involve in that operation?

A Yes maam.

Q Who are they?

A The team leader maam Police Chief Inspector Julius Jimenez, SPO2 Allan delos Reyes, PO2 Jaudian, PO2 Moran, PO2 Cruz, PO1 Mascarina, Agent Dulay and one member from the PDEA.

Q And what was the role of Agent Dulay?

A He is suppose to be my back up maam.

Q How about Police Officer Allan delos Reyes?

A Investigator of the case.

Q How about the other police officers you named?

A Back up maam.

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Q Is this the certificate of coordination form issued by the PDEA?

A Yes maam.

Q Where did you conduct the operation Mr. Witness the buy bust operation?

A At No. 38 23rd Place, West Bajac-Bajac, Olongapo City.

Q What time did you go to the place of operation?

A Before 10:00 o'clock in the morning.

Q On March 26, 2012?

A Yes maam.

Q And what did you do at the place of operation when you arrive?

A I proceeded to the agreed place maam.

Q Who were with you if any?

A I was alone maam.

Q And then what did you do when you went to the place of operation?

A Upon arriving at the agreed place I stayed for a while because Jaime Paut was not yet around.

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Q What happened while you were there?

A After 10 minutes I saw Jaime Paut approaching.

Q What happened next?

A He was carrying a black back pack.

Q What happened next?

A He greeted me and he immediately informed me about our agreement in paying.

Q And what did he say regarding that?

A He reminded me of the consignment basis maam.

Q And what did you tell him if any?

A I just nodded.

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Q So at the time so you mentioned that the accused invited you to go inside the compound?

A Yes maam.

Q What happened next?

A Because his reason was that there were so many people around that's why he preferred to talk inside the compound.

Q What did you do inside the compound?

A Upon arriving inside the compound he opened his bag and then he handed to me one brick of marijuana.

Q

A Where was that marijuana placed?

Inside the black back pack.

Q How about that brick of marijuana given to you by the accused?

A It was wrapped with a newspaper and wrap with a tape.

Q What did you do with that brick of marijuana?

A When he brought it out from the bag he immediately handed it to me maam.

Q What happened next?

A Upon handing it to me I'm supposed to give the pre-arranged signal to our team leader.

Q What happened next?

A Maybe he noticed that I have a companion.

Q What made you conclude that he noticed the presence of other persons?

A Because when he handed to me the marijuana he was already uneasy.

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Q What happened next after he handed you the marijuana?

A When he senses something he immediately ran outside the compound.

Q And what did you do?

A I try to run after him then I immediately saw him boarded on a tricycle.

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Q What happened next?

A When I ran out and I was chasing him my companions was already following him.

Q How did you chase him?

A First earlier we are running then when he boarded the tricycle my companions the vehicle of my companions (sic) moved and stopped in front of me and then I boarded and then we ran after the accused[.]

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Q What happened next while you were chasing the accused?

A We immediately saw him alighted from the tricycle along Brill St. and then he boarded a Victory Liner going to Zambales.

Q

A

Q Do you recall the plate number of the bus that he boarded?

Only the body number maam.

What is the body number?

A 1021 maam.

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Q What happened next?

A Upon arriving at Barretto the bus stop in front of a gasoline station maybe he is going to load (sic) or unload passengers.

Q And what happened next?

A That is the time we stop the bus and went up the bus.

Q Who went up inside the bus?

A I and Agent William Dulay.

Q And what did you do inside the bus?

A We saw Jaime Paut standing near the driver.

Q What happened next?

A Then when we recognize him we frisk him.

Q What happened to the frisking?

A Agent William Dulay recovered from his back pack 7 bricks of marijuana.

Q Who frisked the accused?

A Agent William Dulay.

Q And where did he find the 7 bricks of marijuana?

A In the bag in his back pack.

Q And what happened next?

A Then we informed him of his offense and his constitutional rights.

Q What was his reaction?

A He was speechless and was surprised.

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Q After you informed the accused of his constitutional rights what happened?

A We brought him to Police Station 1 maam.

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Q Mr. Witness who was in possession of the bricks of marijuana given to you by the accused at the time you were chasing the accused?

A I myself maam.

Q While you were inside the car?

A Yes maam.

Q That's the time you were inside the bus who was in possession of the bricks of marijuana?

A Still in my possession and it was already placed in the bag.

Q Whose bag?

A In my bag.

Court:

Q Is that an evidence.

A It's my personal bag I knew he will give me a brick of marijuana that's why I brought a bag.

Fiscal:

Q You mentioned that the accused was brought to Police Station 1 and who were in possession of the 7 bricks of marijuana from the Petron from the place these bricks were recovered to Police Station1?

A Agent William Dulay maam.

Q And what happened at the Police Station 1?

A We put markings on the recovered evidence.

Q And what markings did you place on the marijuana given to you by the accused?

A FM my initial maam.

Q How about the 7 bricks of marijuana?

A Agent Dulay also put his initial WMD.

Q Who were present at the time you were marking the bricks of marijuana?

A The present were the whole CAIDSOT team, PDEA Agent, accused, DOJ representative, Media representative and barangay officials.

Q After marking the bricks of marijuana with your initial what did you do with it?

A I turned it over to our investigator.

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Q And the name of the investigator is?

A SPO2 Allan delos Reyes.

Q Do you know what Police Officer Allan delos Reyes did to the bricks of marijuana you turned over to him?

A He also put his markings maam.

Q What markings did he place?

A ADR maam.

Q Do you know what he did to that bricks of marijuana after marking them with his initials?

A He conducted an inventory.

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Q Do you know who were present at the time while he was conducting the inventory?

A All of us maam the CAIDSOT team, PDEA agent, DOJ representative, Media Representative and Barangay officials.

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Q Was the accused present at the time of the inventory?

A Yes maam.

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Q And who brought the marijuana to the crime lab for examination?

A SPO2 Allan delos Reyes maam.

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Q Do you know the result of the examination?

A Yes maam.

Q What?

A Positive for marijuana.

Q How do you know?

A Based on the chemistry report from the Crime Laboratory.[27]

PDEA agent William M. Dulay substantially corroborated PO2 Ferdinand Mataverde's testimony on material points, such as the delivery of the first brick of marijuana fruiting tops that took place between PO2 Ferdinand Mataverde and accused-appellant on March 26, 2012 at No. 38, 23[rd] Street, West Bajac-Bajac, Olongapo City, the chase that ensued leading to the frisking of accused-appellant by PDEA agent William M. Dulay on board the Victory Liner bus, the recovery by PDEA agent William M. Dulay of 7 additional bricks in accused-appellant's backpack, and the marking by PO2 Ferdinand Mataverde and PDEA agent William M. Dulay of the seized items at the police station, among others. As PDEA agent William M. Dulay testified:

On direct examination:

Q What time did you conduct the illegal drug operation?

A At around 10:00 AM of March 26, 2012, ma'm.

Q Where?

A At 23[rd] Street, West Bajac-bajac, Olongapo City.

Q Who are the persons involved in that buy-bust operation?

A The persons involved in that operation are the CAIDSOT, PNP and the PDEA, ma'm.

Q Who were the persons involved?

A P/SInsp. Julius Jimenez, SPO2 Allan delos Reyes, PO1 Owen Cruz, PO2 Ferdinand Mataverde, PO1 Wilmon Jaudian, PO1 Albert Sagoal, PO1 Ryan Moran and PO1 Ryan Garcia.

Q What is the role of Police Officer Mataverde in this operation?

A The role of Police Officer Mataverde is poseur-buyer.

Q How about the other police officers involved?

A As back up, ma'm.

Q And your role?

A Also arresting officer and back up of Police Officer Mataverde, ma'm.

Q What time did you go to the place of operation?

A 9:30 in the morning, ma'm.

Q At that time Mr. Witness, where was Police Officer Mataverde?

A He was with us. He was in front of the area of operation.

Q And you?

A Outside of the area of operation, ma'm.

Q How far were you from Police Officer Mataverde?

A About 10 to 15 meters away from Mataverde, ma'm.

Q At the time when you arrived, what did you do?

A I positioned myself in the area of operation wherein I personally saw the transaction between Police officer Mataverde and Jaime Paut, ma'm.

Q Where was the subject of the operation?

A He is inside the compound. When we arrived, he met PO2 Mataverde outside the compound and after that, Jaime Paut told PO2 Mataverde to go inside the compound, ma'm.

Q How did you know that Paut told Mataverde to go inside the compound?

A I saw them went inside the compound, ma'm.

Q From the place where you were, could you see the two inside the compound?

A Yes, ma'm.

Q Was the compound fenced?

A Yes it was fenced and there is only one ingress or only one gate.

Q How high?

A About 1 1/2 meters high, ma'm.

Q Could you see them inside?

A Yes, because it was open and we can see them talking.

Q There is a gate?

A Yes, ma'm.

Q You mentioned that the two went inside the compound, what happened next?

A In just a minute, I saw Jaime Paut rushed outside the compound, ma'm.

Q What did you do when you saw him run?

A I am about to help PO2 Mataverde in chasing Jaime Paut but immediately, Jaime Paut boarded the tricycle.

Q Where did he board the tricycle?

A In front of the compound, ma'm.

Q Where did the tricycle come from?

A It just passed by, ma'm.

Q So at the time the tricycle passed by in front of that compound, what did Paut do?

A He immediately stopped the tricycle and he boarded.

Q How far were you from Paut?

A About 10 meters away, ma'm.

Q Where was Police Officer Mataverde at the time Paut boarded the tricycle?

A He was inside the compound.

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Q So how did he chase Jaime Paut?

A He run to chase Jaime Paut but immediately Paut boarded the tricycle.

Q So what did you do?

A Then we tried to help PO2 Mataverde but Paut immediately boarded the tricycle and we boarded our vehicle in order to chase Jaime Paut.

Q What did PO2 Mataverde do?

A We asked him to board the vehicle.

Q Whose vehicle?

A Our unmarked vehicle, ma'm.

Q And then what happened next after you boarded the tricycle?

A We chased Jaime Paut who boarded the tricycle.

Q Where?

A From the area of operation, going to Brill Street, ma'm.

Q Who's driving the unmarked vehicle?

A SPO2 Allan delos Reyes, ma'm.

Q What happened next?

A After that, we saw Jaime Paut on board the tricycle and immediately transferred to a Victory Liner Bus bound to Zambales, ma'm.

Q Where did you see this Victory Liner?

A I saw the Victory Liner bus in front of Lucky C and it is bound to Zambales, ma'm.

Q What happened next after he boarded the Victory Liner bus?

A We tried to stop the bus but unfortunately, the bus suddenly moved.

Q Going to?

A Zambales ma'am. And then we boarded again our vehicle and we followed the Victory Liner bus until it stopped in front of Petron Gas Station to unload passenger and that is the time we stopped the Victory Liner and we were able to get inside the bus, ma'm.

Q Who went inside the Victory Liner bus?

A PO2 Mataverde and I, ma'm.

Q Where was Paut?

A He was inside the Victory Liner bus. He was standing beside the driver, ma'm.

Q What happened when you and Mataverde went inside the bus?

A We saw Jaime Paut and we immediately frisked him, ma'm.

Q Who frisked him?

A I am the one who frisked Jaime Paut, ma'm.

Q What happened next?

A During the frisking, I recovered a black backpack from Jaime Paut containing 7 bricks of marijuana.

Q Where did you find this backpack?

A At his back, ma'm.

Q What was the reaction of Jaime Paut at that time?

A He has no reaction. He was speechless and surprised.

Q What happened next?

A After that, we informed him of his constitutional rights and we proceeded back to Police Station "1".

Q And what did you do to that black backpack?

A I marked it with my initials "WMD".

Q Who were in possession of the backpack with 7 bricks of marijuana from Petron to Police Station "1"?

A I am, ma'm.

Q Petron is located at?

A Bo. Barretto, National Highway, ma'm.

Q Who instructed you to bring the accused and the backpack to Police Station "1"?

A The team leader, ma'm.

Q What is the name of the team leader?

A P/S Insp. Julius Jimenez, ma'm.

Q You mentioned that you marked the bricks of marijuana?

A Yes, ma'm.

Q Where?

A At Police Station "1".

Q What markings did you place?

A My initials "WMD".

Q How about the backpack?

A The same markings, ma'm.

Q Who were present at the time you marked them?

A The representative from the media, the DOJ, Barangay elected official, the accused, the team members of the PDEA as well as the CAIDSOT.[28]

Notably, there is absence of any showing that the police officers concerned had any motive to falsely impute to accused-appellant such a serious crime as illegal sale, delivery and transportation of dangerous drugs. Thus, their testimonies must be accorded full credit, on the presumption of regularity in the performance of their official duty.[29]

Accused-appellant's contention that the prosecution failed to supply all the links needed in the chain of custody of the seized illegal drug, is bereft of basis.

Section 21, paragraph 1, Article II of Republic Act No. 9165 provides the procedural guidelines that police officers must observe in the proper handling of seized illegal drugs in order to ensure the preservation of the identity and integrity thereof.[30] Thus:

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

Section 21 (a), Article II of the Implementing Rules and Regulations of Republic Act No. 9165, provides:

(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)

Jurisprudence teaches that the chain of custody requirements that must be met in proving that the seized drugs are the same ones presented in court are: (i) testimony about every link in the chain, from the moment the item was picked up to the time it is offered into evidence, and (ii) witnesses should describe the precautions taken to ensure that there had been no change in the condition of the item and no opportunity for someone not in the chain to have possession of the item.[31] But a perfect chain of custody is not an absolute requirement. As explained:

In both cases of illegal sale and illegal possession of dangerous drugs, the prosecution must show the chain of

custody over the dangerous drug in order to establish the corpus delicti, which is the dangerous drug itself. Such chain of custody should show that the dangerous drug sold by or in the possession of the accused is the same dangerous drug seized from the said accused and taken into custody by the apprehending officer, marked and subjected to physical inventory by the apprehending officer, submitted to the PDEA or PNP forensic laboratory, subjected by the forensic laboratory examiner to laboratory examination the results of which are contained in a sworn certification, and presented to the court as evidence against the accused. This is to ensure the integrity and evidentiary value of the seized items and preclude the possibility of alteration, tampering or substitution of substance in the chain of custody of the dangerous drug. Nevertheless, a perfect chain is not always the standard as it is almost always impossible to obtain an unbroken chain. What is of utmost importance is the preservation of the integrity and the evidentiary value of the seized items, because the same will be utilized in ascertaining the guilt or innocence of the accused.[32]

In the present case, the police team substantially complied with the prescribed procedure under Section 21, Article II of RA 9165, particularly the preservation of the integrity and the evidentiary value of the seized illegal drugs. As PO2 Ferdinand Mataverde and PDEA agent William M. Dulay testified, after the recovery from accused-appellant of the 8 bricks of marijuana fruiting tops, PO2 Ferdinand Mataverde was the one who kept safe the first marijuana brick that was sold on March 26, 2012 and delivered to him by accused-appellant; PDEA agent William M. Dulay took care of the 7 marijuana bricks accused-appellant transported after the same were subsequently taken on the same day, March 26, 2012, from accused-appellant in the Victory Liner bus until PO2 Ferdinand Mataverde, agent William M. Dulay and accused-appellant reached the police station where both policemen proceeded with the markings on the same day of the seized items. On the same day, PO2 Ferdinand Mataverde and agent William M. Dulay turned over the seized items to investigator SPO2 Allan delos Reyes who marked the same with his initials “ADR”. [33] Also on the same day, SPO2 Allan delos Reyes prepared the inventory receipt and request for laboratory examination [34] and delivered the seized items to Olongapo City Crime Laboratory Office which was duly received by the officer on duty, a certain “PO2 Lonsame”, at 7:30 P.M. on March 26, 2012. [35] The laboratory examination conducted over the 8 suspected marijuana bricks yielded positive result for marijuana, [36] the same specimen identified before the trial court by PO2 Ferdinand Mataverde [37] as the marijuana brick he marked with “FM” and agent William M. Dulay as the 7 marijuana bricks he marked with “WMD”. [38] All these showed that the same 8 bricks of marijuana fruiting tops recovered from accused-appellant and duly marked, were the same 8 bricks of marijuana fruiting tops presented before the trial court. Clearly, the integrity and evidentiary value of the 8 bricks of marijuana fruiting tops were duly preserved.

Verily, as long as the integrity and evidentiary value of the seized item are properly preserved by the apprehending police officers, substantial compliance with the procedure to establish a chain of custody is sanctioned. As held:

The prosecution has properly established the continuous whereabouts of the exhibit at least from the time it came into possession of the police officers, during its testing in the laboratory to determine its composition and up to the time it was offered in evidence.

Be it granted that there was no strict observance of the procedure; the substantial compliance thereof is well sanctioned for in Section 21 (a) of the Implementing Rules and Regulations of R.A. No. 9165 which reads:

xxx xxx xxx

The function of the chain of custody requirement is to ensure that the integrity and evidentiary value of the seized items are preserved, so much so that unnecessary doubts as to the identity of the evidence are removed. As long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending police officers, substantial compliance with the procedure to establish a chain of custody is sanctioned.

This Court in *People v. Lorena* held that:

People v. Pringas teaches that non-compliance by the apprehending/buy-bust team with Section 21 is not necessarily fatal. Its non-compliance will not automatically render an accused's arrest illegal or the items seized/confiscated from him inadmissible. What is of utmost importance is the preservation of the integrity and the evidentiary value of the seized items, as the same would be utilized in the determination of the guilt or innocence of the accused. We recognize that the strict compliance with the requirements of Section 21 may not always be possible under field conditions; the police operates under varied conditions, and cannot at all times attend to all the niceties of the procedures in the handling of confiscated evidence.[39]

Accused-appellant's defense of denial readily pales in light of the positive evidence of the prosecution proving his complicity beyond reasonable doubt. It is settled that the defense of denial, like alibi, has been invariably viewed by the courts with disfavor for it can easily be concocted and is a common and standard defense ploy in most prosecutions for violation of the Dangerous Drugs Act.[40] As the trial court noted:

All documentary, testimonial, and object pieces of evidence, including the markings on the marijuana bricks prove that the substance tested by the forensic chemist, whose laboratory test was well-documented, was the same as that taken from accused. Xxx

In light of the foregoing, the Court considers the denials of (sic) the accused as insufficient to exculpate him of the charges. xxx[41]

The trial court correctly meted upon accused-appellant the penalty of life imprisonment and a fine of Php500,000.00 in accordance with Section 5, Article II of R.A. No. 9165,[42] in relation to R. A. No. 9346.[43]

Then again, factual findings of the trial courts and those involving credibility of witnesses are accorded respect when no glaring errors, gross misapprehension of facts, or speculative, arbitrary, and unsupported conclusions can be gathered from such findings. The trial court is in a better position to decide the credibility of witnesses, having heard their testimonies and observed their deportment and manner of testifying during the trial.[44]

WHEREFORE, the trial court's Decision dated November 20, 2013 is affirmed.

SO ORDERED.

Cruz, S. C., and Hernando, R. P. L., JJ., concur.

[1] pp. 42-51, Rollo

[2] pp. 54-63, *ibid.*

[3] Sale, delivery and transportation of dangerous drugs

[4] pp. 22 & 61-68, Records

[5] pp. 22 & 68-69, *ibid.*

[6] pp. 22 & 70-72, *ibid.*

[7] pp. 22 & 73-74, *ibid.*

[8] pp. 22 & 75-77, *ibid.*

[9] pp. 22 & 77-79, *ibid.*

[10] pp. 3-8, TSN dated September 17, 2013

- [11] pp. 1 & 18, Records
- [12] p. 43, *ibid.*
- [13] p. 48, *ibid.*
- [14] pp. 2-28, TSN dated December 11, 2012
- [15] pp. 2-22, TSN dated May 23, 2013
- [16] pp. 2-13, TSN dated August 13, 2013
- [17] pp. 125-126, Records
- [18] pp. 2-10, TSN dated September 17, 2013
- [19] pp. 188-189, Records
- [20] p. 42, Rollo
- [21] pp. 47-51, Rollo
- [22] *People vs. Ocfemia*, 706 SCRA 312 [2013]
- [23] *People vs. Lucio*, 699 SCRA 173 [2013]
- [24] *People vs. Laba*, 689 SCRA 367 [2013]
- [25] *People vs. Bayani*, 554 SCRA 741 [2008]
- [26] *Ampatuan vs. People*, 652 SCRA 615 [2011]; See also *People vs. Bartolome*, 690 SCRA 159 [2013]
- [27] pp. 10-21, TSN dated December 11, 2012
- [28] pp. 4-12, TSN dated May 23, 2013
- [29] *Espano vs. Court of Appeals*, 288 SCRA 558 [1998]
- [30] *People vs. Roselito Taculod y Elle*, G.R. No. 198108, December 11, 2013
- [31] *People vs. Mantawil*, 651 SCRA 642 [2011] (citing *Malillin v. People*, 553 SCRA 619, 632 [2008])
- [32] *People vs. Somoza*, 701 SCRA 525 [2013]
- [33] pp. 5-8, TSN dated August 13, 2013
- [34] p. 7, *ibid.*
- [35] p. 159, Records (Exhibit “F”)
- [36] p. 160, *ibid.* (Exhibit “G”)
- [37] pp. 22-23, TSN dated December 11, 2012
- [38] p. 18, TSN dated May 23, 2013
- [39] *People vs. Langcua*, 690 SCRA 123 [2013]; See also *People vs. Lapasaran*, 687 SCRA 663 [2012]
- [40] *People vs. Castillo*, G.R. No. 190180, November 27, 2013
- [41] pp. 61-62, Rollo

[42] Sec. 5. Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals. — The penalty of life imprisonment to death and a fine ranging from Five Hundred Thousand pesos (Php500,000.00) to Ten Million pesos (Php10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute dispatch in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions.

[43] Entitled "An Act Prohibiting the Imposition of Death Penalty in the Philippines" ; People vs. Domado, 621 SCRA 73 [2010]

[44] People vs. Lapasaran, 687 SCRA 663 [2012]

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