

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RANDY MAYO Y MENDOZA, ACCUSED-APPELLANT.**

Ponente: LAMPAS PERALTA, J.

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**LAMPAS PERALTA, J.:**

Before the Court is an appeal[1] from the Decision dated October 29, 2012[2] in Criminal Case No. 0474-2005 of Branch 13, Regional Trial Court of Batangas, Lipa City, convicting accused-appellant Randy Mayo y Mendoza of the crime of violation of Section 11[3], paragraph 1, Article II, Republic Act No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002. The case involves 1,658 grams of dried marijuana leaves and 61.4 grams of dried marijuana fruiting tops which were found in accused-appellant's rented apartment as a consequence of the execution of the search warrant issued against him.

**THE ANTECEDENTS**

Prior to August 8, 2005, SPO1 Guillermo Banaag, Chief Investigator of the 402nd Provincial Mobile Group (PMG) stationed at Barangay Masaya, Rosario, Batangas, received information that accused-appellant was engaged in activities involving illegal drugs in Brgy. Latag, Lipa City, Batangas. After surveillance and confirmation of accused-appellant's involvement in illegal drugs, SPO1 Banaag, PO2 Marcos Quitain and PO1 Jeremy Ambita applied for a search warrant which was issued by Executive Judge Avelino Demetria of Branch 85, RTC, Lipa City, Batangas against accused-appellant at his address at No. 2 Dante Briones Apartment, Brgy. Latag, Lipa City, Batangas. The PMG coordinated with the Philippine Drug Enforcement Agency (PDEA) and the Lipa City Police Station on the execution of the search warrant.[4]

On August 8, 2005, around 6:00 P.M., the PMG team composed of Police Inspector Jose Marasigan Jr., SPO1 Benjamin Aguila, PO3 Dante Bautista, PO2 Alex Matibag, PO3 Richard Leynes, PO1 Jeremy Ambita and Gary Guy Goree, a media representative, proceeded to accused-appellant's apartment at the aforesaid address. Barangay Captain Filomino C. Maandal, Jr. was also present. The team did not find accused-appellant in the apartment, but Ana Castillo, his live-in partner, was there who confirmed that accused-appellant was also living there. After explaining the search warrant to Ana Castillo and Barangay Captain Maandal, Police Inspector Jose Marasigan Jr., PO3 Richard Leynes, PO2 Alex Matibag and Gary Guy Goree entered accused-appellant's apartment. The team recovered three (3) packs of suspected dried marijuana in accused-appellant's cabinet and eight (8) sachets containing suspected dried marijuana fruiting tops beside the cabinet. PO3 Dante Bautista took photographs thereof, while PO3 Richard Leynes placed "RLL 08-08-05" representing his initials and the date of the search on the said packs and sachets. The inventory of the items and the Receipt of Property Seized were signed by Ana Castillo, Barangay Captain Maandal, Gary Guy Goree and Police Inspector Jose Marasigan Jr.[5]

On the same night of August 8, 2005, around 9:00 P.M., the PMG team brought the seized items to their headquarters in Brgy. Masaya, Rosario, Batangas. After blotter, PO3 Richard Leynes turned over the recovered marijuana to Chief Investigator SPO1 Guillermo Banaag. Upon return of the search warrant and approval of his custody of the seized items, SPO1 Banaag prepared on August 9, 2005 a letter-request for the examination of the

seized items and personally delivered them on the same day around 4:15 P.M. to SPO1 Lito Vargas of the PNP Batangas Provincial Crime Laboratory Office at Camp General Miguel C. Malvar, Kumintang Ilaya, Batangas City. SPO1 Lito Vargas in turn immediately handed the items to forensic chemist Mr. Jupri Delantar, whose qualitative examination on said specimens yielded a positive result for marijuana, a dangerous drug.[6]

For his part, accused-appellant denies any knowledge about the seized items, but he admits that he was then residing in the rented apartment with Ana Castillo.[7]

Details of the respective factual versions of the parties based on the evidence they presented, were summarized by the trial court in its Decision dated October 29, 2012 as follows:

xxx Prior to August 8, 2005, SPO1 Guillermo Areta Banaag who was then the Chief Investigator of the 402nd Provincial Mobile Group (PMG), stationed at Barangay Masaya, Rosaio, Batangas, received an information from their Intelligence Operatives that herein accused Randy Mayo y Mendoza of Barangay Latag, Lipa City, Batangas, is engaged in activities involving illegal drugs. He thus conducted surveillance on the accused and after confirming such illegal activities, he together with PO2 Marcos Quitain and PO1 Jeremy Ambita applied for a search warrant against the accused before Executive Judge Avelino Demetria of the Regional Trial Court (RTC), Branch 85, Lipa City, Batangas. On August 8, 2005, Judge Demetria issued Search Warrant No. 03-2005 xxx against herein accused Randy Mayo y Mendoza alias “Andy” of No. 2 Dante Briones Apartment, Barangay Latag, Lipa City, Batangas, for Violation of Republic Act No. 9165 otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

Before serving the search warrant, the elements of the 402nd Provincial Mobile Group, entered their operation in their blotter xxx. The group also coordinated with the Philippine Drug Enforcement Agency (PDEA) as evidence by the Pre-Operation Report xxx and the Lipa City Police Station on their planned execution of the search warrant against the accused.

On August 8, 2005, at around 6:00 o' clock in the evening, a team of the 402nd Provincial Mobile Group composed of team leader Police Inspector Jose Marasigan Jr., SPO1 Benjamin Aguila, PO3 Dante Bautista, PO2 Alex Matibag, PO3 Richard Leynes and PO1 Jeremy Ambita together with media representative Gary Guy Goree proceeded to the rented apartment of the accused in Barangay Latag, Lipa City, Batangas, armed with a search warrant. Upon arrival thereat, the team fetched the Barangay Captain of the said barangay, Filomino C. Maandal, Jr., in order to witness the conduct of the search. Barangay Captain Maandal acceded in going with them but upon reaching the house of the accused, they found out that the accused was not around and only his live-in partner, Ana Castillo was there. Ana Castillo however, confirmed that the accused was living there.

To begin the search, PO3 Dante Bautista read and explained the search warrant to Ana Castillo and Barangay Captain Maandal. Thereafter, PI Jose Marasigan Jr., PO3 Richard Leynes, and PO2 Alex Matibag entered the apartment of the accused together with media representative Gary Guy Goree, Ana Castillo and Barangay Captain Maandal. Other members of the searching team were outside the house guarding the perimeter. The apartment has only one (1) room and during the conduct of the search, the team recovered two and a half bricks or packs of suspected dried marijuana xxx inside the cabinet of the said room, wrapped in a newspaper with packing tape and eight (8) pieces of small sachets xxx also containing dried marijuana. The scent of it and previous experiences led the team to believe that those were dried marijuana leaves. PO3 Dante Bautista then

took photographs xxx of the recovered illegal drugs with the searching team and with the civilian witnesses. PO3 Richard Leynes placed the marking RLL 08-08-05, which stands for his initials and the date of the search, on the packages of marijuana recovered. Thereafter, an Inventory of Confiscated/Seized Items xxx was made, duly signed by Ana Castillo, Barangay Captain Maandal, Gary Guy Goree, and team leader PI Jose Marasigan Jr. A Receipt of Property Seized xxx was prepared together with the Certification of Orderly Search xxx with Ana Castillo, Barangay Captain Filomeno C. Maandal, team leader Police Inspector Jose Marasigan as signatories.

The team proceeded to their headquarters in Barangay Masaya, Rosario, Batangas, with the items recovered. At the headquarters, the incidents of their operation were entered in their blotter xxx. The confiscated items were then turned over by PO3 Richard Leynes to their chief investigator SPO1 Guillermo Banaag, who then prepared the 1st Indorsement dated August 9, 2005 for the return of the search warrant, specifically, RTC Branch 85, Lipa City. He also made a Motion for custody of the seized/illegal drugs xxx which the Court granted in its Order dated August 9, 2005 xxx, duly signed by Judge Demetria. Upon the receipt of two and a half (2½) packs of dried marijuana leaves and eight (8) heat sealed transparent plastic sachets containing dried marijuana leaves from the Court, SPO1 Banaag prepared a letter-request xxx for the examination of the said illegal drugs recovered from the accused.

SPO1 Banaag forwarded the confiscated drugs to the PNP Batangas Provincial Crime Laboratory Office Camp General Miguel C. Malvar, Kumintang Ilaya, Batangas City with the letter-request xxx that the said specimens be examined. The Qualitative Examination done on the said specimens as stated in the Chemistry Report Number BD-123-05 xxx gave a positive result for the presence of Marijuana, a dangerous drug. Hence, the instant charge against herein accused for Violation of Section 11, Paragraph 1, Article II of Republic Act No. 9165 otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

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For its part, the Defense presented its lone witness, in the person of the accused himself Randy Mayo y Mendoza.

In claiming innocence, he narrated that on August 16, 2005, he was in Manila for a contract to paint a house for five (5) months. He admitted that in 2005 that he was a resident of B. Reyes Street, Barangay Latag, Lipa City, Batangas. He was then renting an apartment with a female companion, Ana Castillo. He learned from his friend that the said apartment he was renting was searched on August 8, 2005. When his work contract was finished, he went back to Lipa City but instead lived in Barangay Anilao. In 2007, he was arrested at the Sampaguita Mart by PNP members of Rosario, Batangas, by virtue of an Alias Warrant of Arrest issued by Judge Jane Aurora Lantion on account of the instant charge.[8]

A criminal information[9] was filed against accused-appellant for violation of Section 11, paragraph 1, Article II of R. A. No. 9165. Thus:

That on or about the 8th day of August, 2005 at about 7:30 o' clock in the evening at Brgy. Latag, Lipa City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without authority of

law, did then and there wilfully, unlawfully and feloniously have in his custody, control and possession of 1,658 grams of dried marijuana leaves contained in three (3) packages and 61.4 grams of dried marijuana fruiting tops contained in eight (8) separate heat-sealed transparent plastic bags, which are dangerous drugs.

Contrary to law.

Upon arraignment on February 26, 2007, accused-appellant pleaded “not guilty” to the charge.[10] Pre-trial was conducted wherein the trial court issued a pre-trial Order[11] summarizing the matters taken up as follows:

xxx xxx xxx

The Minutes of the Preliminary held on August 14, 2008 are hereby adopted by the parties to wit:

'MARKING OF DOCUMENTARY EVIDENCE:

xxx xxx xxx

WITNESSES:

xxx xxx xxx

STIPULATION OF FACTS:

The identity of the accused as the same accused who was arraigned before this Court, and the jurisdiction of this Honorable Court were admitted.'

The Public Prosecutor presented the original of Chemistry Report BD-123-05 xxx

In addition to the four pictures already marked during the preliminary conference, the Prosecution marked another two (2) pictures xxx and the marijuana contained in the eight (8) heat sealed transparent plastics xxx

xxx xxx xxx

The issue to be resolved is whether or not the accused is guilty of the crime charged.

xxx xxx xxx

Trial ensued. The prosecution presented PO2 Alex Matibag,[12] PO3 Richard Leynes,[13] SPO1 Guillermo Banaag[14] and Barangay Captain Filomino C. Maandal, Jr.[15] as witnesses. The defense presented accused-appellant[16] as its lone witness.

In a Decision dated October 29, 2012, the trial court convicted accused-appellant of violation of Sections 11, paragraph 1, Art. II of R. A. No. 9165 and sentenced him as follows:

WHEREFORE, premises considered and in view of all the foregoing, the Court finds the accused Randy Mayo Y Mendoza GUILTY beyond reasonable doubt for Violation of Section 11, Paragraph 1, Article II of Republic Act No. 9165 otherwise known as the Comprehensive Dangerous Act of 2002 and hereby sentences him to suffer the penalty of life imprisonment and to pay a fine of Five Hundred Thousand Pesos (Php500,000.00) without subsidiary imprisonment in case of insolvency.

The period which the accused has undergone preventive imprisonment during the pendency of this case shall be credited to him provided he agreed in writing to abide by and comply strictly with the rules and regulations imposed upon committed prisoners.

The Jail Warden of the Bureau of Jail Management and Penology (BJMP), Lipa City is hereby directed to immediately commit herein accused to the National Penitentiary, Muntinlupa City, for him to serve his sentence.

The Marijuana subject matters of this case (Exhibit "Q", "R", "S" and "T" inclusive of their sub-markings) are declared confiscated in favor of the government and the Branch Clerk of this Court is ordered to cause the delivery thereof to the Philippine Drug Enforcement Agency (PDEA) for proper disposition in accordance with law.

SO ORDERED.[17]

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

I.

THE COURT A QUO GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY OF THE CRIME CHARGED DESPITE THE POLICE OFFICERS' NON-COMPLIANCE WITH SECTION 21 OF REPUBLIC ACT NO. 9165 AND ITS IMPLEMENTING RULES AND REGULATIONS.

II.

THE COURT A QUO GRAVELY ERRED IN GIVING WEIGHT AND CREDENCE TO THE INCONSISTENT TESTIMONIES OF THE PROSECUTION WITNESSES.[18]

THE ISSUE

Whether the trial court erred in finding accused-appellant guilty beyond reasonable doubt of illegal possession of dangerous drugs.

## THE COURT'S RULING

It is basic that in order to successfully prosecute an offense of illegal possession of dangerous drugs, the following elements must be present: (i) the accused is in possession of an item or object which is identified to be a prohibited drug; (ii) such possession is not authorized by law; and, (ii) the accused freely and consciously possessed the drug.[19] "Possession" of illegal drugs includes constructive possession which means a person remains to be in possession of the prohibited drugs although he may not have or may have lost physical possession of the same. As held:

Re: People vs. Posada[20]

In United States v. Juan, we have clarified the meaning of the words "having possession of". We said that the said phrase included constructive possession, that is, "the relation between the owner of the drug and the drug itself when the owner is not in actual physical possession, but when it is still under his control and management and subject to his disposition." In other words, in that case, we recognized the fact that a person remains to be in possession of the prohibited drugs although he may not have or may have lost physical possession of the same.

Re: Buenaventura vs. People[21]

On the kind of possession and its evidentiary value, the same case of Abuan teaches:

... Possession may be actual or constructive. In order to establish the constructive possession, the People must prove that petitioner had dominion or control on either the substance or the premises where found. The State must prove the adequate nexus between the accused and the prohibited substance. Possession of dangerous drugs constitutes prima facie evidence of knowledge or animus possidendi sufficient to convict an accused in the absence of any satisfactory explanation of such possession. The burden of evidence is shifted to petitioner to explain the absence of animus possidendi. xxx

The bricks of marijuana with a total weight of 7,877.858 grams were found in appellant's house over which he naturally had dominion and control. The bricks were recovered from the bag from where he had earlier taken the one which he sold to poseur-buyer P/Insp. Palisoc.

Contrary to accused-appellant's claim, the prosecution positively established all the essential elements of illegal possession of dangerous drugs. PO2 Alex Matibag positively testified on the material details pertaining to the execution of the search warrant in the rented apartment of accused-appellant resulting in the seizure by the PMG team of the 3 packs of dried marijuana and 8 sachets containing dried marijuana fruiting tops which were found inside the apartment. Thus:

PO2 Alex Matibag on direct examination:

Q When you served the Search Warrant, where did you go, if you can still recall?

A We proceed, Sir, at Apartment at Barangay Latag, Lipa City, Sir.

Q What happened ... (interrupted)

A Sir, before we proceed there, Sir, we coordinated to PDEA, Sir.

Q Who, in particular, coordinated with the PDEA?

A PO3 Dante Bautista, Sir.

Q Do you have an evidence to prove that indeed you coordinated the same with the PDEA?

A Yes, Sir.

Q What evidence do you have?

A Pre-operation report, Sir.

Q If the same will be shown to you, will you be able to identify it?

A Yes, Sir.

Q Showing you a document dated August 8, 2005, what relation has this, if any, to the pre-operation report which you said awhile ago?

A This is it, Sir, signed by ... received by PDEA, Sir.

Q There is a signature here on top of the name Police Inspector Jose Marasigan, Team Leader, do you recognize the signature?

A Yes, Sir.

Q Whose signature is this?

A Police Inspector Jose Marasigan, Sir.

Q Why do you know that this is Police Inspector Marasigan's signature?

A We were there when he signed the Pre-operation Report, Sir.

Q In what place was this Pre-operation Report signed by P/Insp. Marasigan?

A In our Headquarters, Sir, 402nd Provincial Mobile Group, Sir.

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PROS. KASILAG:

Q After this Pre-operation Report was coordinated with the PDEA, what happened next, if any?

A We proceed to the residence of Mr. Randy Mayo at Barangay Latag, Lipa City, Sir.

Q Were you able to reach the residence of Randy Mayo?

A Yes, Sir.

Q What happened when you reached the place?

A We entered into his house, Sir.

Q And what did you do after entering the house?

A We looked for Mr. Randy Mayo, Sir.

Q Where was he at that time when you entered his house?

A He was not there, Sir.

Q Who was present when you entered the house?

A One Ana M. Castillo, Sir.

Q Were you able to know the relation of Ana Castillo with Randy Mayo?

A Yes, Sir.

Q How is she related, what is the relation?

A She said that she is the live-in partner of Randy Mayo, Sir.

Q So what next happened when you were informed by this person, Ana Castillo, that she is the live-in partner of Randy Mayo?

A Our Team Leader asked for the presence of Barangay Official of Barangay Latag, Lipa City, Sir.

Q And what else happened?

A When the Barangay Captain of Latag arrived, we told them that we are going to search by virtue of the Search Warrant, Sir.

Q You told them, the Barangay Chairman?

A And Ms. Ana Castillo, Sir.

Q So in effect, you are stating to us you did not search immediately the house of Randy Mayo?

A Yes, Sir.

Q You first required or called up the Barangay Chairman of the place?

A Yes, Sir.

Q Did the Barangay Chairman of the place arrive?

A Yes, Sir.

Q When the Barangay Chairman of the place arrived, what happened next?

A PO3 Bautista read the Search Warrant in front of Ms. Ana Castillo and the Barangay Captain, Sir.

Q Who was present when the same was read by the said Police Officer?

A Our team, Sir, inside the house, and the Barangay Captain, and Ms. Ana Castillo.

Q You said you were inside the house, who was with you then?

A PO3 Richard Leynes and Police Inspector Jose Marasigan, Sir.

Q There are only three of you?

A Yes, Sir, others are ... (interrupted).

Q Where are the others?

A Outside the perimeter, Sir.

Q So aside from the three of you, who are the civilians present there, if any, before conducting the search?

A Only the Barangay Captain, Sir, and Ms. Ana Castillo.

Q Were you able to search the house of Randy Mayo?

A Yes, Sir.

Q What was the result of the search?

A We saw a sealed pack of alleged marijuana, Sir.

Q Where did you seize the same or where did you find it?

A Inside the aparador sa kwarto, Sir.

Q Were you able to know whose room is that?

A Yes, Sir.

Q Whose room is that?

A Randy Mayo's room, Sir.

Q Were you able to know who the residents of that place are?

A Yes, Sir.

Q Who are the residents?

A Randy Mayo and Ana Castillo, Sir.

Q No one else?

A Yes, Sir.

Q How many package of marijuana did you and your companions were able see?

A Three packages, Sir.

Q These three packages were found specifically in what place?

A Inside the aparador, Sir. In the room and inside the aparador.

Q So when you see these things, these packs of items, what did you do next, if any?

A PO3 Richard Leynes opened one of the packages, Sir.

Q And what did you do, if any?

A Upon opening it, we found out that it is dried marijuana leaves, Sir.

Q How were you able to know that those are dried marijuana leaves?

A Through its smell, Sir, because we had arrested before...

Q And what can you say about the smell of these things that you recovered?

A Medyo mabango, Sir, iyong amoy ng pinatuyong marijuana eh.

Q How do you compare the smell of this marijuana from the things that you said you likewise was able to smell before?

A The same smell, Sir.

Q So what else happened, if any, after you were able to know that three packages are indeed dried marijuana?

A We also saw plastics containing dried marijuana leaves, Sir.

Q Where did you find that?

A Beside the place where we found the three packages, Sir.

Q So what did you do, if any, when you saw these things?

A I called for my team leader, Sir.

Q Who is your team leader?

A Police Inspector Jose Marasigan, Sir.

Q What did you tell him?

A I told him we saw dried marijuana leaves there, Sir.

Q Where was your team leader when you saw these things?

A At the sala, Sir.

Q How about the Barangay Chairman, where was he then when you saw these things?

A He was with us inside the room, Sir.

Q How about Ana Castillo, where was she then when you found these things?

A She's in the sala, Sir.

Q So to clarify, it was only you, the Barangay Chairman, and Richard Leynes who searched, who found these things in the room of Randy Mayo?

A Yes, Sir.

Q So what was the contents, if any, of those plastics?

A Dried leaves of marijuana, Sir.

Q How did you come to know again, that those are indeed marijuana leaves?

A The same that we saw earlier in the package, Sir.

Q So what else happened, or what did you do, if any, upon knowing that these are marijuana?

A Our team leader called for PO3 Bautista so that picture will be taken, Sir.

Q Who was that companion who was called upon to take the photograph?

A PO3 Dante Bautista, Sir.

Q Was he able to take photographs?

A Yes, Sir.

Q Where was the photograph taken?

A At the place where we saw the marijuana leaves, Sir.

Q When you said, "the place where we saw," are you referring to the cabinet or to the room?

A To the room, Sir.

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Q Where was Ms. Ana Castillo then, when she was signing the Inventory of Confiscated Items?

A At the sala of the residence of the accused, Sir.

XXX XXX XXX

Q Now, after photographs were taken at the house of the accused, what else happened?

A They were asked to sign a document called Orderly Search, Sir.

Q If the same will be shown to you, will you be able to identify the same?

A Yes, Sir.

Q I am showing to you a document denominated Certification of Orderly Search, what is the relation of this document denominated Certification of Orderly Search, what is the relation of this document with the certification which you mentioned awhile ago?

A Yes, Sir, this is the Certification of Orderly Search.

Q There is a signature on top of the name Ana M. Castillo, do you recognize the signature?

A Yes, Sir.

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Q What happened next, Mr. Witness, in the Police Headquarters, when you reached the same?

A It was re-entered in the blotter, Sir.

Q Do you have the copy of the blotter?

A Yes, Sir.

Q Will you please produce it?

A It's in the Headquarters, Sir.

Q Now, after entering the same in the blotter, what else happened?

A We turned over the confiscated items to our Investigator, Sir.

Q And what did the Investigator do, if any, if you know?

A It was kept first because it was already night time, Sir.

Q What happened on the next day?

A I do not know what happened the next day because it was already turned over to the Investigator, Sir.

Q Do you know whether or not these items were forwarded to the Crime Laboratory for examination?

A Yes, Sir.

Q What was the result of the examination?

A The result, Sir, is positive.

Q Do you know whether or not before you received this Chemistry Report, a request was made for the Crime Laboratory to conduct laboratory examination on these items?

A It's our Investigator who prepared the request, Sir.

Q If the request will be shown to you, will you be able to identify it?

A Yes, Sir.

Q Showing you a document denominated Qualitative Substance Examination Request For dated August 9, 2005, is this the request you are referring to?

A Yes, Sir.[22] (Underlining supplied)

Although accused-appellant was not present and claims to be somewhere else at the time when the PMG team conducted a search in his rented apartment, still he must be considered to have constructive possession of the apartment as there is no question that he was residing therein and therefore, it was under his dominion and control. Brgy. Chairman Filomeno Maandal, Ana Castillo (live-in partner of accused-appellant) and accused-appellant himself confirmed that he was residing in the apartment. As the trial court noted:

Although the accused was not present in his apartment when the search was made, such circumstance does not invalidate the search or makes the same irregular. The live-in partner of the accused confirmed to the searching team that the accused lives there xxx while the barangay chairman of the place, Filomeno Maandal, also confirmed that the house which was searched was where the accused lived xxx. In fact, the accused himself admitted that his apartment in Barangay Latag, Lipa City was searched on August 8, 2005 xxx. While it is true that accused was not caught red-handed in possession of the two and a half bricks or packs of suspected dried marijuana xxx wrapped in a newspaper with packing tape and eight (8) pieces of small sachets xxx also containing dried marijuana, as the same were found in a cabinet in his room, under the law, possession of dangerous drugs, includes not only actual possession, but also constructive possession.

xxx xxx xxx

It has been established that the place where the search was made and where the marijuana were recovered was the house of the accused where he lived. It therefore follows that the illegal drugs found inside a cabinet inside his room belonged to him or is under his dominion or control.[23]

Accused-appellant argues that “the prosecution failed to remove doubt or uncertainty on the identity and integrity of the allegedly seized drugs because no representative from the Department of Justice (DOJ) was present during the time of the seizure. No mention was made about a DOJ representative in any of the testimonies of the prosecution witnesses; only Ana M. Castillo, Barangay Captain Filomino C. Maandal, Jr., and media representative Gary Guy Goree were mentioned in the said testimonies. In fact, the space provided for the signature of a DOJ representative in the Inventory of Confiscated/Seized Items was left blank.”[24]

The alleged absence of a representative from the DOJ during the confiscation of the drugs in accused-appellant's apartment did not affect the evidentiary weight of the drugs seized as the chain of custody of the evidence was shown to be unbroken under the circumstances and the integrity and evidentiary value of the items were duly preserved. As held:

Hambora likewise questions the chain of custody of the shabu confiscated in view of police officers' failure to comply with the statutory guidelines laid down in Section 21 of R.A. 9165. We reject Hambora's claim and agree with the CA's pronouncement on the matter.

Time and again, jurisprudence is consistent in stating that substantial compliance with the procedural aspect of the chain of custody rule does not necessarily render the seized drug items inadmissible. In the instant case, although the police officers did not strictly comply with the requirements of Section 21, Article II of R.A. 9165, their noncompliance did not affect the evidentiary weight of the drugs seized from Hambora as the chain of custody of the evidence was shown to be unbroken under the circumstances of the case.

The CA aptly discussed as follows:

[W]hile admittedly Section 21 of R.A. 9165 was not complied [with] insofar as the inventory and the presence of key persons were concerned, the prosecution has sufficiently established that a buy-bust operation was in fact conducted, and that the one (1) sachet subject of the sale which, after examination was found to be "shabu," was positively identified as the one also presented in court. Hence, the integrity of the subject illegal drug properly preserved.[25]

SPO1 Guillermo Banaag and PO3 Richard Leynes also testified on the measures taken by the PMG team in the handling and safekeeping of the recovered packs and sachets of marijuana from the time of their confiscation until they were brought to the crime laboratory. Thus:

SPO1 Guillermo Banaag on direct examination:

Q Aside from preparing this document, what else did you prepare, if any?

A I prepared the motion for custody of the confiscated drugs for further turn over to the Provincial Crime Laboratory, Sir.

Q If that document will be shown to you, will you be able to identify it?

A Yes, Sir.

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Q When it was granted, it was turned over to you the items?

A Yes, Sir.

Q What made you say that the same was granted?

A They issue an order that my motion was granted.

Q If the Court Order will be shown to you, will you be able to identify it?

A Yes, Sir.

xxx xxx xxx

Q It is likewise stated on the second page that the entries received the following items. Will you please tell us the items stated in that document?

A Yes, Sir. I received the two and a half packs of dried marijuana leaves and eight heat sealed transparent plastic sachets containing dried marijuana leaves.

xxx xxx xxx

Q Upon receipt, Mr. Witness, of these items, where did you deliver it?

A I delivered that drugs to the Provincial Crime Laboratory of Batangas.

Q Do you have proof, Mr. Witness, that, indeed, you were the one who delivered the same to the crime laboratory?

A Yes, Sir.

Q What is your proof?

A I prepared an indorsement forwarded to Batangas Crime Laboratory and it was received thereat, Sir.

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Q Mr. Witness, could you tell us the condition of these marijuana that you delivered, that were seized at the rented apartment of the accused at the time your first saw it? At the time you first saw it.

A The marijuana was placed in eight transparent sachets and the two packs with size of almost long coupon bond, Sir, and 1 1/2 inches thick.

Q When you said size of coupon bond, how many packs are there?

A Two and a half, Sir.[26]

SPO1 Guillermo Banaag on cross-examination:

Q And after that, you prepared the documents for custody and endorsement?

A Yes, Sir.

Q Were you the one who delivered that alleged illegal drugs to the provincial crime laboratory?

A Yes, Sir.

Q You are alone during that time?

A I can not remember, Sir.

Q To whom did you turn that illegal drugs?

A The duty officer, Sir.[27]

PO3 Richard Leynes on direct examination:

Q. Mr. Witness, for the records, will you please examine the contents of this bag, it was described awhile ago and tell us the relation of the contents of that bag with that you seized at the house of Randy Mayo.

Witness:

A. These are the items we seized from the house of Randy Mayo, Sir.

Q. Why do you know, Mr. Witness, that these were the same items which were confiscated or seized from the house of Randy Mayo?

Witness:

A. My initials are here, Sir.

Q. Will you please point to your initials?

A. This, sir.

Interpreter:

Witness pointed to RLL-08,08-05.

xxx xxx xxx

Q. Now, after you placed markings on these items, what next happened, Mr. Witness?

A. We asked their signatures in the inventory and to the certification of orderly search and we brought to the camp at 402nd PMG, Sir.

Q. Who did you bring at barangay, at that police station?

A. Only the marijuana items, Sir.

PROS. D. KASILAG:

Q. Who in particular was in custody of these items after you placed marking on it?

Witness:

A. I was also the one who brought the items to our camp, Sir.

Q. So, you are in effect trying to tell us that after you placed that marking on those items you were the one who personally brought these items?

A. I was the one who brought the items 402nd camp, Sir.

Q. And when you reached the 402nd mobile group, to whom did you turned it, over (sic) these items?

A. We caused the recording in our police blotter and from what I remember, SPO1Guillermo Banaag and he was the one who referred to the RTC Branch 85 before Hon. Judge Avelino Demetria, Sir.[28]

The prosecution evidence consisting of the testimonies of the police officers and the blotter, request for Qualitative/Substance Examination and Chemistry Report Number BD-123-05,[29] bear that after the packs and sachets of marijuana were confiscated from accused-appellant's apartment on August 8, 2005, the same were marked by PO3 Richard Leynes by placing his initials and the date of the search "RLL 08-08-05". On the very night of August 8, 2005, PO3 Richard Leynes turned over the confiscated items to Chief Investigator SPO1 Guillermo Banaag, who in turn, delivered the same on August 9, 2005 at 4:15 P.M. to SPO1 Lito Vargas of the PNP Batangas Provincial Crime Laboratory Office at Camp General Miguel C. Malvar, Kumintang Ilaya, Batangas City. SPO1 Lito Vargas in turn handed them over immediately to forensic chemist Mr. Jupri Delantar who tested the packs and sachets positive for marijuana. Lastly, said packs and sachets of marijuana were then presented to and identified in the court.[30] This unbroken link in the chain of custody precluded the possibility that a person, not in the chain, ever gained possession of the seized evidence. The Court thus finds that the integrity and the evidentiary value of the seized packs and sachets of marijuana were duly preserved, consistent with the chain of custody rule.[31] As held:

The first link in the chain of custody starts with the seizure of the plastic sachet containing shabu during the buy-bust operation. Records show that only Sistemio was in possession of the shabu from the time it was given to him by appellant, while they were in the Security Office of the mall where the accused were initially brought, while they were in transit, and up until they reached the PDEA Office. xxx

The second link is the turnover of the drugs at the PDEA Office, which was brought and marked by Sistemio himself.

The third link constitutes the delivery of the request and the specimen to the PNP Crime Laboratory. It was likewise Sistemio who prepared the request and personally turned over the specimen to the forensic chemist.

The fourth link seeks to establish that the specimen submitted for laboratory examination is the one presented in court. xxx

Under these circumstances, the prosecution has established beyond doubt an unbroken link in the chain of custody. The unbroken link in the chain of custody also precluded the possibility that a person, not in the chain, ever gained possession of the seized evidence.

Chemistry Report No. D-86-05 confirmed that a qualitative examination conducted on the specimen with a specified quantity of 45.47 grams inside the plastic sachets seized from appellant yielded positive result for Methamphetamine Hydrochloride or shabu. Xxx[32]

Accused-appellant also harps on the non-presentation of the forensic chemist[33] who could have established the final link in the chain of custody. The non-presentation as witnesses of other persons such as the investigator and the forensic chemist is not a crucial point against the prosecution. The prosecution has the discretion as to how to present its case and it has the right to choose whom it wishes to present as witnesses.[34]

In any event, it was stated in the trial court's Order dated June 10, 2009[35] that the prosecution and the defense entered into stipulation on the genuineness and due execution of Chemistry Report No. BD-123-05. Consequently, the testimony of Forensic Chemist Jupri Delantar was dispensed with. Also, in order to expedite the proceedings, counsel for accused-appellant admitted[36] during the hearing on December 14, 2010 that as shown on the request for laboratory examination, SPO Lito Vargas of the crime laboratory received on August 9, 2005 at 4:15 P.M. the specimen from SPO1 Guillermo Banaag and turned over the same to Forensic Chemist Jupri Delantar for laboratory examination.[37]

Accused-appellant further points out that the testimonies of the prosecution witnesses suffered from material inconsistencies to wit: (i) SPO1 Guillermo Banaag alleged that accused-appellant's illegal activities were reported to him by an intelligence operative, yet SPO1 Guillermo Banaag also claimed that he conducted the surveillance himself; (ii) SPO1 Guillermo Banaag testified that at one time he caught accused-appellant selling shabu instead of marijuana, but he decided not to arrest accused-appellant because he was "unprepared;" (iii) the police officers were not able to determine Ana Castillo's identity since no identification card was shown to prove her identity; (iv) PO2 Alex Matibag identified the police officers who entered the house during the search, but they did not include a certain PO3 Katigbak (sic) whom PO2 Alex Matibag testified as one of those who entered the house; (v) PO3 Richard Leynes allegedly placed the markings on the seized items inside the very room of accused-appellant, yet in PO2 Alex Matibag's testimony, the marking was done in the sala; and, (vi) PO2 Alex Matibag could not ascertain whether he signed the inventory of the confiscated items.[38]

The alleged inconsistencies alluded to by accused-appellant in the testimonies of the police officers are peripheral matters which do not detract from the fact that their testimonies pertaining to the elements of the crime of illegal possession of dangerous drugs remain unshaken.

The penalty meted by the trial court upon accused-appellant which is life imprisonment and fine of Php500,000.00 is in accordance with R.A. No. 9165.[39]

Then again, the Court finds no cogent basis to disturb the trial court's findings and conclusion. When it comes to credibility, the trial court's assessment deserves great weight, and is even conclusive and binding, if not tainted with arbitrariness or oversight of some fact for circumstances of weight and influence. The reason is obvious. Having the full opportunity to observe directly the witnesses' deportment and manner of testifying, the trial court

is in a better position than the appellate court to evaluate testimonial evidence properly.[40]

WHEREFORE, the appealed Decision dated October 29, 2012 of the trial court is affirmed.

**SO ORDERED.**

Acosta, and Garcia-Fernandez, JJ., concur.

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[1] pp. 28-43, Rollo

[2] pp. 370-381, Records

[3] Possession of dangerous drugs

[4] TSNs, February 25, 2009, pp. 5-9, May 4, 2009, p. 3, November 3, 2009, pp. 4-5, February 17, 2010, pp. 6-7

[5] TSNs, February 25, 2009, pp. 9-29, June 10, 2009, pp. 17-29, p. 311, Records

[6] TSNs, February 25, 2009, pp. 30-33, June 10, 2009, pp. 17-29, December 14, 2010; p. 2, p. 148, Records

[7] TSN, February 7, 2012

[8] pp. 371-376, Records

[9] p. 1, *ibid.*

[10] p. 30, *ibid.*

[11] pp. 91-94, *ibid.*

[12] TSN, February 25, 2009 & May 4, 2009

[13] TSN, June 10, 2009 & November 3, 2009

[14] TSN, February 17, 2010 & October 5, 2010

[15] TSN, February 2, 2011

[16] TSN, February 7, 2012

[17] pp. 380-381, Records

[18] p. 28, Rollo

[19] *People vs. Remigio*, 687 SCRA 336 [2012]

**[20] 667 SCRA 790 [2012]**

**[21] 529 SCRA 500 [2007]**

[22] TSN, February 25, 2009, pp. 7-15, 22 & 30-31

[23] pp. 54-55, Rollo

[24] p. 35, *ibid.*

[25] *People vs. Hambora*, 687 SCRA 653 [2012]

[26] TSN, February 17, 2010, pp. 10-17

[27] TSN, October 5, 2010, p. 6

[28] TSN, June 10, 2009, pp. 17-21

[29] pp. 148 & 310-311, Records

[30] TSN, February 17, 2010

[31] Section 21 (1), Article II of Republic Act No. 9165 provides:

Section 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) of the IRR which 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.

[32] People vs. Angkob, 681 SCRA 414 [2012]

[33] p. 36, Rollo

[34] People vs. Angkob, 681 SCRA 414 [2012]

[35] p. 138, Records

[36] TSN, December 14, 2010, p. 2

[37] People vs. Angkob, 681 SCRA 414 [2012]

[38] pp. 37-42, Rollo

[39] SECTION 11. Possession of Dangerous Drugs. — The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (P500,000.00) to Ten million pesos (P10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall possess any dangerous drug in the following quantities,

regardless of the degree of purity thereof:

xxx xxx xxx

(7) 500 grams or more of marijuana; and

xxx xxx xxx

[40] People vs. Aure, 639 SCRA 570 [2011]

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