

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. VICTOR DIAZ VINECARIO; ARNOLD ROBLE AND GERLYN WATES, APPELLANTS.

G.R. No. 141137. January 20, 2004

Ponente: CARPIO MORALES, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-141137/>

CARPIO MORALES, J.:

From the Decision of July 20, 1999, as amended by Order of September 9, 1999, of the Regional Trial Court of Davao City, Branch 16, finding appellants Victor Vincario, Arnold Roble and Gerlyn Wates guilty beyond reasonable doubt of violation of Article IV of Republic Act No. 6425 (Dangerous Drugs Act of 1972, as amended by Republic Act No. 7659), and imposing upon them the penalty of reclusion perpetua, they lodged the present appeal.

The Information dated April 25, 1995, filed against appellants reads as follows:

The undersigned accuses the above-named accused for VIOLATION OF SECTION 4, ARTICLE II IN RELATION TO SECTION 21, ARTICLE IV OF R.A. 6425, committed as follows:

That on or about April 10, 1995 in the City of Davao, Philippines and within the jurisdiction of this Honorable Court, the above-mentioned accused, conspiring, confederating and helping one another, without being authorized by law, willfully, unlawfully and feloniously transported, delivered and possessed 1.7 kilos dried marijuana leaves which are prohibited drugs.

CONTRARY TO LAW.[1]

Upon arraignment on September 11, 1995, appellants, duly assisted by counsel, pleaded not guilty to the offense charged.

The facts as established by the prosecution are as follows:

On the night of April 10, 1995, at around 10:45 p.m., as about fifteen police officers were manning a checkpoint at Ulas, Davao City pursuant to COMELEC Resolution No. 2735, otherwise known as the COMELEC gun ban, a Honda TMX motorcycle with three men on board sped past them.[2] One of the police officers blew his whistle[3] and ordered them to return to the checkpoint.

Obliging, the three men aboard the motorcycle returned to the checkpoint. SPO1 Haydenburge Goc-ong (SPO1 Goc-ong) of the 11th Regional Mobile Force 4th Company thereupon asked them why they sped away to which appellant Victor Vincario (Vincario), who was seated behind appellant Arnold Roble (Roble) and in front of appellant Gerlyn Wates (Wates) on the motorcycle, retorted that he is a member of the army.[4] When asked by the law enforcers to produce an identification card, he could not, however, offer any. At this point, the police officers noticed that a big military backpack was slung over the right shoulder of Vincario who was observed, as were his co-appellants, to be afraid and acting suspiciously.[5] SPO1 Goc-ong thus asked Vincario what the contents of the backpack were. Vincario answered that it merely contained a mat and proceeded to pass it to Wates, who in turn passed it to Roble who, however, returned it to Vincario.[6]

Suspecting that the backpack contained a bomb, SPO1 Goc-ong instructed his men to disperse, following which he ordered Vinecario to open the bag. Vinecario did as ordered and as SPO1 Goc-ong noticed something wrapped in paper, he told Vinecario to take the same out. Again Vinecario obliged, albeit reiterating that it was only a mat.

SPO1 Goc-ong then touched the stuff wrapped in paper upon which Vinecario grabbed it,[7] resulting to the tearing off of the paper wrapper. Soon the smell of marijuana wafted in the air.

Vinecario thereafter told SPO1 Goc-ong “let us talk about this,”[8] but the latter ignored Vinecario and instead called his Commanding Officer and reported to him that marijuana was found in Vinecario’s possession.

On orders of the Commanding Officer, the other police officers brought appellants along with two bundles of marijuana, the backpack and the motorcycle to the battalion office at Camp Catitipan in Davao City and were turned over to one PO2 Cabalon, an investigator of Regional Mobile Force 11. Before proceeding to said battalion office, however, the incident was blotted[9] by PO3 Edward Morado at the Buhangin Police Station.[10]

On April 11, 1995, SPO1 Goc-ong, PO1 Vicente Carvajal (PO1 Carvajal) and PO1 Pual Padasay brought the confiscated suspected marijuana to the camp’s crime laboratory for examination[11] which determined it to weigh 1,700 grams[12] and to be indeed positive therefor.[13]

As for appellants, their version of the incident follows:

Vinecario, then a member of the 25th Infantry Battalion of the 6th Infantry Division of the Philippine army stationed at Pagakpak, Pantukan,[14] approached motorcycle driver Wates at a terminal in Andile, Mawab and requested him to bring him to his elder brother at Parang, Maguindanao for a fee of P500.00 which he paid.[15] The two thus proceeded to Carmen, Panabo where they picked up Roble to alternate with Wates as driver, and at 8:00 a.m., the three left for Parang.[16]

On reaching Parang at about 1:20 p.m., Vinecario borrowed P3,000.00 from his brother Teofanis to shoulder the medical expenses of his son. At about 4:30 p.m., after partaking of snacks at Teofanis’ residence, appellants left for Davao City.

Along Parang Highway, Abdul Karim Datolarta, Vinecario’s former co-employee at Emerson Plywood where he previously worked, blocked the motorcycle.[17] Vinecario thus alighted from the motorcycle and shook hands with Datolarta[18] who asked where they were headed for and requested that he ride with them. Vinecario turned Datolarta down as there was no longer any room in the motorcycle. Datolarta then asked if he (Vinecario) could take his bag of clothes and bring it to his cousin, one Merly, in Roxas, Tagum. Without examining its contents, Vinecario acquiesced, took Datolarta’s bag and left with his co-appellants.[19]

On reaching Ulas in the evening of the same day, appellants, seeing that there was a checkpoint,[20] sped past it. When they were about 50 to 60 meters away from the checkpoint, they heard a whistle, prompting Wates to tap Vinecario, telling him that the whistle came from the checkpoint. Vinecario then told Roble to go back to the checkpoint.

While at the checkpoint, five police officers approached appellants and instructed them to alight from the motorcycle. One of the officers asked Vinecario who he was, and Vinecario identified himself as a member of the Philippine National Police.[21] The officer asked for identification and when Vinecario could not produce any, the former got the backpack slung on Vinecario’s shoulder.

The same officer then asked Vinecario if they could open the bag, and as Vinecario acquiesced, two officers opened the bag upon which they shouted that it contained marijuana. Vinecario then grabbed the backpack to confirm if there was indeed marijuana. At that instant, the police officers held his hands and brought him, together

with the other appellants, to the Buhangin Police Station, and later to Camp Catitipan.

At the camp, appellants were investigated by police officials without the assistance of counsel, following which they were made to sign some documents which they were not allowed to read.[22]

The trial court, by Decision of July 20, 1999, found appellants guilty as charged. The dispositive portion of the decision reads, quoted verbatim:

WHEREFORE, finding the evidence of the prosecution, more than sufficient to prove the guilt of all three accused beyond reasonable doubt of the offense charged, accused PFC Victor Vinecario, Arnold Roble and Gerlyn Wates, pursuant to Sec. 4, Art. II in relation to Art. IV or (sic) Rep. Act 6425 as amended by Rep. Act 7659, Sec. 20, par. 5 thereof, are jointly sentence (sic) to suffer the supreme penalty of death by lethal injection, under Rep Act 8177 in the manner and procedure therein provided, in relation to Sec. 24 of Rep. Act 7659, amending Art. 81 of the Revised Penal Code.

Finally pursuant to Rep. Act 7659 Sec. 22 the Branch Clerk of Court of RTC 16 Davao City, is ordered to elevate the entire records of this case with the Clerk of Court, Supreme Court Manila, for the automatic review of this Decision, after its promulgation.

SO ORDERED.[23] (Underscoring supplied)

By Order of September 9, 1999, the trial court set aside its decision of July 20, 1999 and disposed as follows, quoted verbatim:

Accordingly, all accused (sic) motion for reconsideration on this aspect, on the imposition of the penalty against all accused, even if invoked only be accused Venecaio (sic) through his counsel de officio, will apply to all accused since there exists conspiracy of all in the commission of the offense charged.

Judgment of this court, dated July 20, 1999, is accordingly set aside and reconsidered, only insofar as the imposition of the supreme penalty of death through lethal injection under Republic Act No. 8177, is concerned.

All accused PFC Victor Venecario, Arnold Roble and Gerlyn Wates, are instead sentence (sic) to suffer the penalty of reclusion perpetua, pursuant to Art. IV, Sec. 21, in relation to Art. IV of Republic Act No. 6425 as amended by Republic Act No. 7659, Sec. 20, par. 5 thereof, in accordance with Art. 63 of the Revised Penal Code, as decided by the Supreme Court in the recent case of *Peope (sic) vs. Ruben Montilla* G.R. No. 123872 dated January 30, 1998.

However, the findings of this court for the conviction of all aaccused (sic) of the offense charged, is (sic) sustained. The corresponding motion (sic) for reconsideration of all accused through their counsel for their acquittal of (sic) the offense charged, is denied, for lack of merit.

SO ORDERED.[24] (Emphasis and Underscoring supplied)

The prosecution then filed a Motion for Reconsideration[25] dated September 14, 1995 of the above-mentioned Order of the trial court, it arguing that the commission of the offense charged against appellants was attended by an aggravating circumstance in that it was committed by an organized or syndicated crime group, thus warranting the imposition of the death penalty.

In the meantime, Roble and Wates filed their Notice of Appeal[26] on September 15, 1999. Vinecario followed suit and filed his Notice of Appeal.[27]

The trial court, by Order dated September 22, 1999, denied the prosecution's Motion.

In their brief, Roble and Wates assign the following errors:

- THE TRIAL COURT'S OBSERVATION THAT APPELLANTS WATES AND ROBLE CONSPIRED WITH VICTOR VINECARIO IN TRANSPORTING MARIJUANA FROM PARANG, MAGUINDANAO IS NOT BORNE BY THE EVIDENCE (sic) ON RECORD AND SHOWS THAT THE TRIAL COURT GRAVELY ERRED IN MISAPPREHENDING FACTS IF NOT A COMPLETE DISREGARD OF THE EVIDENCE, BOTH DOCUMENTARY AND TESTIMONIAL.

- THE TRIAL COURT GRAVELY ERRED IN FAILING TO AFFORD EVIDENTIARY WEIGHT TO THE RECANTATION MADE BY POLICE OFFICERS HAYDENBURG GOC-ONG AND VICENTE CARVAJAL THAT BOTH APPELLANTS WATES AND ROBLE WERE NOT NERVOUS AND APPREHENSIVE AT THE TIME (sic) OF THE OPENING OF THE MILITARY PACK CONTAINING MARIJUANA NEAR THE CHECKPOINT.

- THE TRIAL COURT GRAVELY ERRED IN NOT GIVING CREDENCE TO THE TESTIMONIES OF APPELLANTS WATES AND ROBLE THAT THEY WERE MERELY HIRED BY VICTOR VINECARIO TO BRING HIM TO PARANG, MAGUINDANAO FOR A FEE OF P500.00 WITH FREE FOOD AND GASOLINE.

- THE TRIAL COURT GRAVELY ERRED IN DECLARING THE RENTAL OF P500.00 WHICH VINECARIO PAID TO THE OWNER OF THE [MOTORCYCLE] AS INADEQUATE BY TAKING JUDICIAL NOTICE OF THE BUS FARE OF P268.00 FROM MACO, DAVAO PROVINCE TO SUN WAY CROSSING, MAGUINDANAO DOWN TO PARANG, MAGUINDANAO.[28]

Wates and Roble argue that there is no iota of evidence to prove that they acted with unity of purpose and in the execution of any unlawful objective with Vinecario.[29] They assert that they had no prior knowledge of Vinecario's plan to meet with a man who would give the backpack containing marijuana; that prosecution witnesses SPO1 Goc-ong and PO1 Carvajal's declaration that they (appellants Wates and Roble) were not nervous, uneasy or apprehensive when the backpack was opened buttresses their claim that they did not conspire with Vinecario; and that the prosecution's theory of conspiracy was merely based on the testimony of PO1 Carvajal that they acted nervously when the backpack was ordered opened for inspection; that there was a "great variance" in the testimonies of SPO1 Goc-ong and PO1 Carvajal in the direct examination and their testimonies on rebuttal as to the events that transpired on April 10, 1995, thus casting serious doubts on the trial court's findings of guilt.

On September 17, 2001, Vinecario filed an Urgent Motion to Withdraw Appeal,[30] stating that he is "practically satisfied with the decision of the trial court"; that "he would not waste anymore the effort of the honorable Supreme Court Justices in further reviewing his case"; and that as he was "driven by the sincerest desire in renewing his life," he "irrevocably moves for the withdrawal of his appeal." On even date, Roble and Wates likewise filed an Urgent Motion to Withdraw Appeal,[31] stating that they admit the commission of the offense for which they were convicted; that they are satisfied with the decision of the trial court; and that they are already serving the penalty for their offense and "realize the overt admittance of guilt as the only vehicle in [their] gradual renewal."

By Resolution of November 27, 2001, this Court denied the Motions of appellants and directed Vinecario to file his brief within forty-five days from notice of the resolution.

In a brief dated January 25, 2002, Vinecario attributes the following errors to the trial court:

- THE COURT A QUO GRAVELY ERRED IN HOLDING THAT THE SEARCH UPON THE PERSON OF ACCUSED-APPELLANT AND THE SEIZURE OF THE ALLEGED 1,700 GRAMS OF MARIJUANA AS (sic) VALID.

- THE COURT A QUO GRAVELY ERRED IN ADMITTING AS EVIDENCE AGAINST

ACCUSED-APPELLANT THE ALLEGED 1,700 GRAMS OF MARIJUANA AS IT WAS A PRODUCT OF AN ILLEGAL SEARCH.

- THE COURT A QUO GRAVELY ERRED IN GIVING WEIGHT AND CREDENCE TO THE TESTIMONY OF PROSECUTION WITNESSES AND IN GIVING THE POLICEMEN THE PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF DUTY DESPITE THE APPARENT IRREGULARITIES IN THE MANNER OF ARRESTING THE ACCUSED-APPELLANT.

- THE COURT A QUO GRAVELY ERRED IN FINDING THAT THE GUILT OF THE ACCUSED-APPELLANT FOR THE CRIME CHARGED HAS BEEN PROVEN BEYOND REASONABLE DOUBT.[32]

Vinecario argues that the prosecution failed to show that the search conducted by the police officers was incident to a lawful arrest; that he could not have been deemed to have consented to the search as any such consent was given under intimidating or coercive circumstances; and that there existed no probable cause to justify the search and seizure of the backpack, hence, the marijuana is inadmissible in evidence, it being a product of illegal search.

Vinecario adds that the police officers who arrested and investigated him failed to inform him of his rights to remain silent and to have competent and independent counsel of his choice, thereby violating Section 12(1), Article III of the Constitution.[33]

The rule is constitutionally enshrined that no search and seizure can lawfully be conducted without a valid warrant issued by a competent judicial authority. Section 2, Article III of the Constitution so ordains:

Sec. 2. 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 or 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.

And Section 3(2), Article III of the same Constitution mandates that any evidence obtained in violation of the right of the people under Section 2 shall be inadmissible for any purpose in any proceeding.

The constitutional proscription against warrantless searches and seizures admits of certain exceptions, however. Search and/or seizure may be made without a warrant and the evidence obtained therefrom may be admissible in the following instances: (1) search incident to a lawful arrest; (2) search of a moving motor vehicle; (3) search in violation of customs laws; (4) seizure of evidence in plain view; (5) when the accused himself waives his right against unreasonable searches and seizures; and (6) stop-and-frisk situations.[34]

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.[35] 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.[36]

x x x [Checkpoints are not illegal per se. Thus, under exceptional circumstances, as where the survival of organized government is on the balance, or where the lives and safety of the people are in grave peril, checkpoints may be allowed and installed by the government.

x x x

No one can be compelled, under our libertarian system, to share with the present government its ideological beliefs and practices, or commend its political, social and economic policies or performance. But, at least, one must concede to it the basic right to defend itself from its enemies and, while in power, to pursue its program

of government intended for public welfare; and in the pursuit of those objectives, the government has the equal right, under its police power, to select the reasonable means and methods for best achieving them. The checkpoint is evidently one of such means it has selected.

Admittedly, the routine checkpoint stop does intrude, to a certain extent, on motorists' right to "free passage without interruption", but it cannot be denied that, as a rule, it involves only a brief detention of travelers during which the vehicle's occupants are required to answer a brief question or two. x x x

These routine checks, when conducted in a fixed area, are even less intrusive. As held by the U.S. Supreme Court:

"Routine checkpoint stops do not intrude similarly on the motoring public. First, the potential interference with legitimate traffic is minimal. Motorists using these highways are not taken by surprise as they know, or may obtain knowledge of, the location of the checkpoints and will not be stopped elsewhere. Second checkpoint operations both appear to and actually involve less discretionary enforcement activity. The regularized manner in which established checkpoints are operated is visible evidence, reassuring to law-abiding motorists, that the stops are duly authorized and believed to serve the public interest. The location of a fixed checkpoint is not chosen by officers in the field, but by official responsible for making overall decisions as to the most effective allocation of limited enforcement resources. We may assume that such officials will be unlikely to locate a checkpoint where it bears arbitrarily or oppressively on motorists as a class, and since field officers may stop only those cars passing the checkpoint, there is less room for abusive or harassing stops of individuals than there was in the case of roving-patrol stops. Moreover, a claim that a particular exercise of discretion in locating or operating a checkpoint is unreasonable is subject to post-stop judicial review." [37]

Judicial notice is taken of the existence of COMELEC Resolution No. 2735 imposing a gun ban during an election period issued pursuant to Section 52(c) of the Omnibus Election Code (Batas Pambansa Blg. 881). [38] The national and local elections in 1995 having been held on May 8, the present incident, which occurred on April 10, 1995, was well within the election period.

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 men 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. [39]

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

Warrantless search of the personal effects of an accused has been declared by this Court as valid, because of existence of probable cause, where the smell of marijuana emanated from a plastic bag owned by the accused, or where the accused was acting suspiciously, and attempted to flee. [40] (Emphasis supplied).

That probable cause existed to justify the search conducted by the police officers at the checkpoint is gathered from the following testimony of SPO1 Goc-ong:

Q:

You said you saw three on board a motorcycle what did your unit do when these three persons approached?

A:

We were waiting for them. When they arrived they stopped and speeded away.

Q:

What was your reaction when you saw the motor speeding away?

A:

One of my men blew his whistle ordering to (sic) return back (sic).

x x x

Q:

When they returned back (sic) what happened?

A:

When they returned back (sic) I asked them why they speeded away?

Q:

What did they answer?

A:

One of them said that he is a member of the army.

Q:

If that person who said that he is a member of the army is in court, can you point to him?

A:

(Witness went down from the witness stand and pointed to a man wearing yellow t-shirt who stood up and when asked about his name answered that he is Victor Venecario).

x x x

Q:

What was your reaction when Venecario failed to show any identification papers to show that he is really a member of the army?

A:

We saw his big backpack and asked him what was inside.

Q:

Who was carrying that big backpack?

A:

Venecario.

x x x

Q:

You said you asked him what was (sic) the contents of that backpack, can you tell us why did you (sic) ask him?

A:

I asked about that because I observed them to be acting suspiciously as if they were afraid and different reactions (sic).

Q:

They were acting suspiciously?

A:

Yes.

Q:

That is what you have observed from their faces?

A:

Yes, sir.

Q:

What did Venecario do when you asked him about the contents of that backpack?

A:

He said that it is a mat and passed it on to his companion.

Q:

You said he passed it on to his companion, there were two (2) companions, to whom did he pass it on?

A:

He passed it on to Wates and Wates passed it on to Roble.

Q:

What did Roble do when Wates passed it to him?

A:

Roble returned it back (sic) to Venecario.

Q:

So what was your reaction when you saw the three passing the bag from one person to another?

A:

My suspicion was it was a bomb and ordered my men to scatter.

Q:

Tell us why are you (sic) concerned about explosives was there any incident prior to that checkpoint?

A:

Election was past (sic) approaching and there was a threat that Davao City will be bombed.

Q:

Prior to that was there any incident?

x x x

A:

In Ipil, Zamboanga on April 4.

Q:

If you recall when was that?

A:

April 4 of the same year.

Q:

You said the bag was passed to Venecario and you told your men to scatter, what happened next?

A:

I ordered Venecario to open the backpack.

Q:

What did Venecario do when you ordered him to open?

A:

They opened the backpack..[41]

SPO1 Goc-ong's testimony was corroborated by PO1 Vicente Carvajal:

Q:

At about 10:45 in the evening of that date April 10, 1995 do you recall of any unusual incident while you were conducting that checkpoint?

A:

Yes, sir.

Q:

What was that incident all about?

A:

At that time, while we were conducting a checkpoint, we saw this motorcycle passing and flagged them to stop and there were three (3) persons and one was manning and they briefly stopped but speeded away.

x x x

Q:

When these three (3) persons returned (sic) back (sic) what happened?

A:

The one riding introduced himself as a member of the army.

x x x

Q:

You said these three persons were nervous and one of them introduced himself as an army man, what did you do?

A:

I asked for an ID.

Q:

Who among you asked for an ID?

A:

Sgt. Goc-ong.

Q:

Where were you at that time when Goc-ong asked for his ID?

A:

I was behind him because I backed him up.

Q:

What was the reaction of Venecario when he was asked to produce an ID?

A:

He answered that he has no ID.

Q:

What was the reaction of the group when Venecario failed to show any ID that he was an army man?

A:

Our other companion moved closer as security.

Q:

Why?

A:

We were on alert because on April 4 the one who attacked were (sic) in uniform.

Q:

At that time what was Venecario wearing?

A:

He was in camouflage and wearing sleepers (sic).

x x x

Q:

After that what happened?

A:

We were able to observe that he was carrying a bag.

Q:

What was the reaction of Venecario when he was asked what was (sic) the contents of the bag?

A:

He appeared to be hesitant and he said that it contained clothes.

Q:

Before that what did Venecario do?

A:

He placed it in (sic) his shoulder.

Q:

What did he do with the backpack?

A:

When asked he passed it to his other companions.

Q:

What did Venecario when he passed it to his companion?

A:

Venecario passed it to his companion and that companion passed it to his other companion.

Q:

After this companion received the backpack from his companion what did he do?

A:

He returned back (sic) to Venecario.

Q:

They passed it from one person to another until it was returned to Venecario?

A:

Yes, sir.

x x x

Q:

You said that backpack was passed from one person to another and when he got hold of that backpack what happened?

A:

He opened the backpack.

Q:

Who told him to open the backpack?

A:

Sgt. Goc-ong.[42]

In light then of appellants' speeding away after noticing the checkpoint and even after having been flagged down by police officers, their suspicious and nervous gestures when interrogated on the contents of the backpack which they passed to one another, and the reply of Vinecario, when asked why he and his co-appellants sped away from the checkpoint, that he was a member of the Philippine Army, apparently in an attempt to dissuade the policemen from proceeding with their inspection, there existed probable cause to justify a reasonable belief on the part of the law enforcers that appellants were offenders of the law or that the contents of the backpack were instruments of some offense.

As to Vinecario's allegation that his constitutional rights were violated during the custodial investigation conducted by the police officers, the same is relevant and material only when an extrajudicial admission or confession extracted from an accused becomes the basis of his conviction.[43] In the case at bar, the trial court convicted appellants on the basis of the testimonies of the prosecution witnesses, particularly those of SPO1 Haydenburge Goc-ong and PO1 Vicente Carvajal.

Finally, Vinecario harps on his defense of denial which he recounted as follows:

Q:

After leaving the residence of your brother was there any unusual incident that took place?

A:

Yes, sir.

Q:

What was that?

A:

The moment we arrived there there was a person who blocked us.

Q:

Where?

A:

Parang Highway.

Q:

Coming here to Davao?

A:

Yes.

Q:

What happened after Crossing Parang?

A:

There was a person who blocked us.

Q:

A former companion of yours?

A:

Yes.

Q:

A former soldier?

A:

No, sir.

Q:

You said your former companion, am I correct?

A:

Before I became a soldier, I worked in Emerson Plywood.

Q:

So that person who flagged down you were (sic) your former companion?

A:

Yes.

Q:

You are familiar with him?

A:

I know him very well.

Q:

He was your close friend?

A:

Yes.

Q:

What is the name of that person who stopped you?

A:

Abdul Karim Datolarta.

Q:

He was alone when he stopped you?

A:

Yes, sir.

Q:

What happened when your friend Abdul Karin (sic) Datolarta stopped you?

A:

When he stopped us, I immediately disembarked from the motor vehicle and shook hands with him.

Q:

He was the one who stopped you or you were the one who told the driver to stop?

A:

My friend.

Q:

You immediately recognized the face of that friend of yours?

A:

Not yet.

Q:

What else happened aside from shaking hands and greeting?

A:

He asked me where I was heading.

Q:

What was your answer?

A:

I told him that I am going back to Davao.

Q:

What else did he tell you?

A:

He told me if he can also ride with us.

Q:

What did you tell him?

A:

I told him we were already three.

Q:

What happened next?

A:

Since I refused he asked me if I could bring his bag and he mentioned the name of that cousin of his in Tagum.

Q:

He mentioned the name?

A:

Yes, Merly.

Q:

What is the family name?

A:

He just mentioned Merly who is residing in Tagum.

Q:

Where in Tagum?

A:

Roxas, Tagum.

Q:

What did you do when he asked you to bring that bag to his cousin in Tagum?

A:

I asked him what was (sic) the contents?

Q:

What did he answer you?

A:

He answered clothes.

Q:

What did you do?

A:

Because were (sic) were in a hurry I slung it in (sic) my shoulder.

Q:

You did not become suspicious?

A:

No more because I trusted the person and I have an emergency to take (sic) that time.[44]

Vinecario's account - that in the evening of April 10, 1995, while he and his co-appellants were cruising along the highway, a person whom he failed to recognize but who turned out to be an acquaintance, Abdul Karim Datolarta, flagged down[45] the motorcycle, and as requested by Datolarta, he readily agreed to bring a backpack to Datolarta's cousin without checking its contents - is incredible, contrary to human experience, and taxes credulity. Datolarta was not even apprehended nor presented at the trial, thus further eliciting serious doubts on Vinecario's tale.

The defense of denial, like alibi, has invariably been viewed by the courts with disfavor for it can just as easily be concocted and is a common and standard defense ploy in most prosecutions of the Dangerous Drugs Act.[46]

The categorical and consistent testimonies, and the positive identification by prosecution witnesses SPO1 Goc-ong and PO1 Carvajal, against whom no ill motive to falsely charge appellants was shown, must thus then prevail over the unconvincing alibi and unsubstantiated denial of appellants.

As for the challenged finding by the trial court of conspiracy among appellants, the same fails.

Conspiracy exists when two or more persons come to an agreement concerning the commission of a crime and decide to commit it.[47] Where the acts of the accused collectively and individually demonstrate the existence of a common design towards the accomplishment of the same unlawful purpose, conspiracy is evident, and all the perpetrators will be liable as principals.[48] To exempt himself from criminal liability, the conspirator must have performed an overt act to dissociate or detach himself from the unlawful plan to commit the crime.[49]

In *People v. Concepcion*,[50] this Court held:

x x x Proof of agreement need not rest on direct evidence as the same may be inferred from the conduct of the parties indicating a common understanding among them with respect to the commission of the offense. It is not necessary to show that two or more persons met together and entered into an explicit agreement setting out the details of an unlawful scheme or the details by which an illegal objective is to be carried out. It may be deduced from the mode and manner in which the offense was perpetrated or inferred from the acts of the accused evincing a joint or common purpose and design, concerted action and community of interest.

In the case at bar, as established by the evidence, appellants connived in unlawfully transporting the subject marijuana. Roble, who was driving the motorcycle at Ulas, did not stop but instead sped away upon seeing the checkpoint in a clear attempt to avoid inspection by the police officers. When asked as to the contents of the backpack by SPO1 Goc-ong, appellants passed the same to one another, indicating that they knew its contents. These circumstances manifest appellants' concerted efforts and cooperation towards the attainment of their criminal objective.

Wates and Roble assail the credibility of prosecution witnesses SPO1 Goc-ong and PO1 Carvajal, they contending that these witnesses contradicted their testimonies-in-chief when they subsequently testified on rebuttal that appellants were not nervous or apprehensive at all when they were being inspected by the policemen.

It bears noting, however, that the alleged conflicting observations of SPO1 Goc-ong and PO1 Carvajal referred to by Roble and Wates on their department pertain to different stages of the checkpoint inspection as a scrutiny of the records reveals. Thus, in his direct examination, SPO1 Goc-ong testified as follows:

Q:

You said you asked him what was (sic) the contents of that backpack, can you tell us why did you (sic) ask

him?

A:

I asked about that because I observed them to be acting suspiciously as if they were afraid and different reactions (sic).

Q:

They were acting suspiciously?

A:

Yes.

Q:

That is what you observed in their faces?

A:

Yes, sir.[51]

PO1 Carvajal, on cross-examination, echoed Goc-ong's observations on appellants' deportment upon returning to the checkpoint:

Q:

You said when these three (3) suspects riding the motorcycle returned and stopped you said you noticed one of them was nervous, did I get you right?

A:

Yes, sir.

Q:

Only one was nervous?

A:

All of them.

Q:

When you said they appeared to be nervous, could that mean that they were trembling?

A:

Yes, sir.

Q:

In fact they were pale, is that correct?

A:

Yes.

Q:

You noticed they were pale despite the fact that it was dark and it was 10:00 o'clock in the evening?

A:

There was light.

Q:

The place was well-lighted?

A:

Yes, sir.[52]

On rebuttal, SPO1 Goc-ong stated that appellants were not anxious or apprehensive when he flagged them down as they crossed the checkpoint.[53]

PO1 Carvajal, on the other hand, testified on rebuttal that Wates was not nervous as Vinecario's backpack was being opened.[54]

As to the other alleged discrepancies pointed out by Wates and Roble, the following arguments of the Office of the Solicitor General, which are quoted with approval, should dispose of the same:

It is incorrect to suggest that just because SPO1 Goc-ong testified that other vehicles passed through the checkpoint before the appellants arrived, the latter could not have sped away from the checkpoint. SPO1 Goc-ong did not give any testimony that other vehicles were still at the checkpoint at the time the appellants arrived. On the contrary, he testified there was no other vehicle ahead of the appellants at the checkpoint when the latter arrived on their motorcycle (TSN, June 17, 1999, p.7).

It is also incorrect to suggest that appellants may not have noticed the checkpoint just because SPO1 Goc-ong made no mention of using reflectorized objects at the checkpoint. As described earlier in his Brief, this witness explained that the checkpoint was visible because it had a sign board at the middle of the road that read, "COMELEC GUN BAN" (TSN, June 17, 1999, pp. 6 and 8). There is no way for appellants not to have noticed the checkpoint.[55]

In fine, appellants' defenses fail in light of their clearly proven act of delivering or transporting marijuana.

The evidence shows that accused-appellant was apprehended in the act of delivering or transporting illegal drugs. "Transport" as used under the Dangerous Drugs Act is defined to mean: "to carry or convey from one place to another." When accused-appellant used his vehicle to convey the package containing marijuana to an unknown destination, his act was part of the process of transporting the said prohibited substance. Inherent in the crime of transporting the prohibited drug is the use of a motor vehicle. The very act of transporting a prohibited drug, like in the instant case, is a *malum prohibitum* since it is punished as an offense under a special law. The mere commission of the act constitutes the offense and is sufficient to validly charge and convict an individual committing the act, regardless of criminal intent. Since the appellant was caught transporting marijuana, the crime being *mala prohibita*, accused-appellant's intent, motive, or knowledge, thereof need not be shown.[56] (Underscoring supplied)

A word on the penalty. As provided in Section 4 of the Dangerous Drugs Act, the penalty of reclusion perpetua to death and a fine ranging from five hundred thousand pesos to ten million pesos shall be imposed upon any person who, unless authorized by law, shall transport any prohibited drug. Section 20, Article IV of the same act provides that the penalty imposed in Section 4 shall be applied if the dangerous drug is, with respect to marijuana, 750 grams or more. In the case at bar, the marijuana involved weighed 1,700 grams. Since the law prescribes two indivisible penalties, a resort to Article 63 of the Revised Penal Code[57] is necessary. There being no mitigating

nor aggravating circumstance that attended the commission of the offense, the lesser penalty of reclusion perpetua was properly imposed by the trial court. A fine of P500,000.00 should, however, been likewise imposed on the appellants in solidum in accordance with the law.

WHEREFORE, the decision of the Regional Trial Court, Davao City, Branch 16, in Criminal Case No. 35233-95 finding appellants Victor Vinecario, Arnold Roble and Gerlyn Wates guilty beyond reasonable doubt of illegally transporting marijuana under Section 4, Article II of Republic Act No. 6425, as amended, is hereby **AFFIRMED** with **MODIFICATION**. As modified, appellants are sentenced to each suffer the penalty of reclusion perpetua and solidarity pay a fine of P500,000.00.

SO ORDERED.

Vitug, (Chairman), Sandoval-Gutierrez, and Corona, JJ., concur.

[1] Id. at 8.

[2] TSN, December 13, 1995 at 18.

[3] Ibid.

[4] Ibid.

[5] Id. at 20-21.

[6] Id. at 21.

[7] Id. at 23.

[8] Id. at 23.

[9] Exhibit "F", Records at 234.

[10] TSN, December 13, 1995 at 25.

[11] Exhibit "D", Records at 232.

[12] TSN, December 11, 1995 at 8.

[13] Exhibit "C"-Chemistry Report No. D-072-85, Records at 231.

[14] TSN, July 29, 1998 at 13.

[15] Id. at 15.

[16] Id. at 14.

[17] Id. at 20.

[18] Id. at 21.

[19] Id. at 23.

[20] TSN, July 29, 1998 at 23-24; TSN, November 14, 1996 at 14; TSN, November 15, 1996 at 44.

[21] TSN, July 29, 1998 at 26.

[22] Id. at 30.

[23] Rollo at 44.

[24] Id. at 45-D.

[25] Records at 209-223.

[26] Rollo at 45-I.

[27] Records at 232-A-232-C.

[28] Id. at 53-54.

[29] Id. at 73.

[30] Id. at 149.

[31] Id. at 157.

[32] Rollo at 176-177.

[33] SEC. 12(1) Any person under investigation for the commission of an offense shall have the right to be informed of his right to remain silent and to have competent and independent counsel preferably of his own choice. If the person cannot afford the services of counsel, he must be provided with one. These rights cannot be waived except in writing and in the presence of counsel.

[34] *People v. Usana*, 323 SCRA 754, 768 (2000) (citations omitted); *People v. Doria*, 301 SCRA 668, 705 (1999) (citations omitted).

[35] *People v. Usana*, 323 SCRA 754, 767 (2000) (citation omitted).

[36] Id.

[37] *Valmonte v. de Villa*, 185 SCRA 665 (1990).

[38] SEC. 52 Powers and functions of the Commission on Elections.- In addition to the powers and functions conferred upon it by the Constitution, the Commission shall have exclusive charge of the enforcement and administration of all laws relative to the conduct of elections for the purpose of ensuring free, orderly and honest elections, and shall:

x x x

(c) Promulgate rules and regulations implementing the provisions of this Code or other laws which the Commission is required to enforce and administer, and require the payment of legal fees and collect the same in payment of any business done in the Commission, at rates that it may provide and fix in its rules and regulations.

x x x

[39] *Valmonte v. De Villa*, 185 SCRA 665, 670 (1990).

[40] *People v. Malmstedt*, 198 SCRA 401, 408 (1991).

[41] TSN, December 13, 1995 at 17-22.

[42] Id. at 39-42.

[43] *People v. Buluran*, 325 SCRA 476, 485 (2000) (citation omitted).

[44] TSN, July 29, 1998 at 19-23.

[45] Id. at 21.

[46] People v. Concepcion, 361 SCRA 716, 723 (2001) (citations omitted).

[47] Id at 731.

[48] People v. Ellado, 353 SCRA 643, 649 (2001) (citation omitted).

[49] People v. Morial, 363 SCRA 96, 124 (2001) (citation omitted).

[50] 361 SCRA 716 (2001).

[51] TSN, December 13, 1995 at 20-21.

[52] Id. at 53-54.

[53] TSN, June 17, 1999 at 8.

[54] Id. at 14.

[55] Rollo at 255-256.

[56] People v. Del Mundo, 366 SCRA 471 (2001).

[57] ART. 63. Rules for the application of indivisible penalties. – xxx

In all cases in which the law prescribes a penalty composed of two indivisible penalties, the following rules shall be observed in the application thereof:

- When in the commission of the deed there is present only one aggravating circumstance, the greater penalty shall be applied.
- When there are neither mitigating nor aggravating circumstances in the commission of the deed, the lesser penalty shall be applied.
- When the commission of the act is attended by some mitigating circumstances and there is no aggravating circumstance, the lesser penalty shall be applied.
- When both mitigating and aggravating circumstances attended the commission of the act. The court shall reasonably allow them to offset one another in consideration of their number and importance, for the purpose of applying the penalty in accordance with the preceding rules, according to the result of such compensation.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.