

DON DJOWEL SALES Y ABALAHIN, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.*G.R. No.191023. February 06, 2013*

Ponente: VILLARAMA, JR., J.

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Before us is a petition for review on certiorari assailing the Decision[1] dated September 30, 2009 and Resolution[2] dated January 27, 2010 of the Court of Appeals (CA) in CA-G.R. CR No. 31942. The CA upheld the judgment[3] of the Regional Trial Court (RTC) of Pasay City, Branch 231 finding petitioner Don Djowel Sales y Abalahin guilty beyond reasonable doubt of illegal possession of marijuana.

Petitioner was charged with violation of Section 11, Article II, Republic Act (R.A.) No. 9165 (Comprehensive Dangerous Drugs Act of 2002) under an Information which states:

That on or about the 24[th] day of May 2003, in Pasay City, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused DON DJOWEL A. SALES, without authority of law, did then and there wilfully, unlawfully and feloniously have in his possession, custody and control 0.23 gram of dried Marijuana fruiting tops, a dangerous drug.

Contrary to law. x x x[4]

Upon arraignment, petitioner duly assisted by counsel de oficio, pleaded not guilty to the charge.

Evidence adduced by the prosecution at the trial established that on May 24, 2003, petitioner was scheduled to board a Cebu Pacific plane bound for Kalibo, Aklan at its 9:45 a.m. flight. He arrived at the old Manila Domestic Airport (now Terminal 1), Domestic Road, Pasay City at around 8:30 in the morning. As part of the routine security check at the pre-departure area, petitioner passed through the Walk-Thru Metal Detector Machine and immediately thereafter was subjected to a body search by a male frisker on duty, Daniel M. Soriano, a non-uniformed personnel (NUP) of the Philippine National Police (PNP) Aviation Security Group (ASG).[5]

While frisking petitioner, Soriano felt something slightly bulging inside the right pocket of his short pants. When Soriano asked petitioner to bring the item out, petitioner obliged but refused to open his hands. Soriano struggled with petitioner as the latter was nervous and reluctant to show what he brought out from his pocket. Soriano then called the attention of his supervisor, PO1 Cherry Trota-Bartolome who was nearby.[6]

PO1 Trota-Bartolome approached petitioner and asked him to open his hands. Petitioner finally opened his right hand revealing two rolled paper sticks with dried marijuana leaves/fruiting tops. After informing petitioner of his constitutional rights, PO1 Trota-Bartolome brought petitioner and the seized evidence to the 2nd Police Center for Aviation Security (2nd PCAS), PNP-ASG Intelligence and Investigation Branch and immediately turned over petitioner to the Philippine Drug Enforcement Agency (PDEA) Airport Team at the Ramp Area, Ninoy Aquino International Airport (NAIA) Complex, Pasay City.[7] The investigating officer, POII Samuel B. Hojilla,[8] placed the markings on the two marijuana sticks: "SBH-A" and "SBH-B." [9]

The specimens marked “SBH-A” and “SBH-B” when subjected to chemical analysis at the PNP Crime Laboratory in Camp Crame, Quezon City yielded positive results for the presence of marijuana, a dangerous drug.[10]

Denying the charge against him, petitioner testified that on May 24, 2003, he, together with his girl friend and her family were headed to Boracay Island for a vacation. While he was queuing to enter the airport, he was frisked by two persons, a male and a female. The two asked him to empty his pockets since it was bulging. Inside his pocket were a pack of cigarettes and cash in the amount of P8,000.00 in 500 peso-bills. His girl friend told him to get a boarding pass but he asked her to wait for him as he will still use the comfort room. On the way to the comfort room, he was blocked by a male person who frisked him for a second time, asking for his boarding pass. This male person wearing a white shirt without an ID card, asked petitioner to empty his pockets which he did. The male person then said it was “okay” but as petitioner proceeded to go inside the comfort room, the male person called him again saying that “this fell from you” and showing him two “small white wrappings which seemed to be marijuana.” Petitioner told the male person that those items were not his but the latter said they will talk about it in the comfort room.[11]

At that point, petitioner claimed that his girl friend was already shouting (“Ano ‘yan, ano ‘yan?”) as she saw PO1 Trota-Bartolome approaching them. PO1 Trota-Bartolome then told petitioner to explain at the ground floor while the male person (Soriano) was showing to her the marijuana sticks saying “Ma’am, I saw this from him.” Petitioner went back to the comfort room and there he saw his girl friend’s father (the Mayor of their hometown, Camiling, Tarlac) talking with a police officer. However, his girl friend and her family left him and he was investigated by the police officers.[12]

The prosecution presented the testimonies of the following: PO1 Trota-Bartolome, P/Insp. Sandra Decena-Go (Forensic Officer, Chemistry Division, PNP-Crime Laboratory) and NUP Soriano.

After trial, the RTC rendered its Decision, the dispositive portion of which reads:

WHEREFORE, all the foregoing considered, the Court finds the accused, Don Djowel Sales y Abalahin, GUILTY beyond reasonable doubt of violation of Section 11, Article II of Republic Act No. 9165, also known as The Comprehensive Dangerous Drugs Act of 2002. Accordingly, he is hereby sentenced to suffer indeterminate penalty of imprisonment of twelve (12) years and one (1) day as minimum, to fourteen (14) years, eight (8) months and one (1) day, as maximum, and to pay a fine of Three Hundred Thousand Pesos (P300,000.00) without subsidiary imprisonment in case of insolvency.

The 0.23 gram of dried marijuana fruiting tops confiscated from the accused is hereby ordered forfeited in favor of the government. The officer-in-charge of this Court is hereby ordered to immediately turnover the same to the appropriate government agency for proper disposition in accordance with law.

Cost against the accused.

SO ORDERED.[13]

On appeal, the CA ruled that the body search conducted on petitioner is a valid warrantless search made pursuant to a routine airport security procedure allowed by law. It found no merit in petitioner’s theory of frame-up and extortion. On the issue of the integrity and probative value of the evidence used to convict petitioner, the CA held that there is no hiatus or confusion that the marijuana that was marked at the airport, then subjected to qualitative examination on the same day and eventually introduced as evidence against petitioner, is the same prohibited drug that was found in his custody and possession when he was apprehended at the pre-departure area of the airport in the morning of May 24, 2003.

The CA also explained that while the “marijuana leaves” referred to by Soriano in his testimony was otherwise called by the public prosecutor and the Forensic Chemical Officer as “dried marijuana fruiting tops” in both the criminal information and the Laboratory Report, these do not refer to different items. Both marijuana leaves with fruiting tops were rolled in two papers which were actually found and seized from petitioner’s possession in the course of a routine security search and frisking.

With the denial of his motion for reconsideration, petitioner is now before us alleging that the CA failed to address the following assigned errors:

IT HAS NOT BEEN ESTABLISHED WITH COMPETENT EVIDENCE THAT THE ITEMS SUPPOSEDLY TAKEN FROM THE APPELLANT WERE THE VERY SAME ITEMS THAT REACHED THE CHEMIST FOR ANALYSIS;

THIS, ESPECIALLY IN LIGHT OF THE PROSECUTION’S IMPROBABLE SCENARIO AT THE AIRPORT WHERE, FOR NO SPECIAL REASON GIVEN, THE APPELLANT HAD TO BE METICULOUSLY BODILY SEARCHED EVEN AFTER HE HAD TWICE SUCCESSFULLY PASSED THROUGH THE DETECTOR.[14]

The petition has no merit.

In a prosecution for illegal possession of dangerous drugs, the following facts must be proven with moral certainty: (1) that the accused is in possession of the object identified as prohibited or regulated drug; (2) that such possession is not authorized by law; and (3) that the accused freely and consciously possessed the said drug.[15]

In this case, the prosecution has satisfactorily established that airport security officers found in the person of petitioner the marijuana fruiting tops contained in rolled paper sticks during the final security check at the airport’s pre-departure area. Petitioner at first refused to show the contents of his short pants pocket to Soriano who became suspicious when his hand felt the “slightly bulging” item while frisking petitioner.

In *People v. Johnson*, [16] which also involved seizure of a dangerous drug from a passenger during a routine frisk at the airport, this Court ruled that such evidence obtained in a warrantless search was acquired legitimately pursuant to airport security procedures, thus:

Persons may lose the protection of the search and seizure clause by exposure of their persons or property to the public in a manner reflecting a lack of subjective expectation of privacy, which expectation society is prepared to recognize as reasonable. Such recognition is implicit in airport security procedures. With increased concern over airplane hijacking and terrorism has come increased security at the nation’s airports. Passengers attempting to board an aircraft routinely pass through metal detectors; their carry-on baggage as well as checked luggage are routinely subjected to x-ray scans. Should these procedures suggest the presence of suspicious objects, physical searches are conducted to determine what the objects are. There is little question that such searches are reasonable, given their minimal intrusiveness, the gravity of the safety interests involved, and the reduced privacy expectations associated with airline travel. Indeed, travelers are often notified through airport public address systems, signs, and notices in their airline tickets that they are subject to search and, if any prohibited materials or substances are found, such would be subject to seizure. These announcements place passengers on notice that ordinary constitutional protections against warrantless searches and seizures do not apply to routine airport procedures.[17]

Petitioner concedes that frisking passengers at the airport is a standard procedure but assails the conduct of Soriano and PO1 Trota-Bartolome in singling him out by making him stretch out his arms and empty his pockets. Petitioner believes such meticulous search was unnecessary because, as Soriano himself testified, there was no beep sound when petitioner walked past through the metal detector and hence nothing suspicious was indicated by that initial security check. He likewise mentioned the fact that he was carrying a bundle of money at that time,

which he said was not accounted for.

We find no irregularity in the search conducted on petitioner who was asked to empty the contents of his pockets upon the frisker's reasonable belief that what he felt in his hand while frisking petitioner's short pants was a prohibited or illegal substance.

Such search was made pursuant to routine airport security procedure, which is allowed under Section 9 of R.A. No. 6235. Said provision reads:

SEC. 9. Every ticket issued to a passenger by the airline or air carrier concerned shall contain among others the following condition printed thereon: "Holder hereof and his hand-carried luggage(s) are subject to search for, and seizure of, prohibited materials or substances. Holder refusing to be searched shall not be allowed to board the aircraft," which shall constitute a part of the contract between the passenger and the air carrier. (*Italics in the original*)

The ruling in *People v. Johnson* was applied in *People v. Canton*[18] where the accused, a female passenger was frisked at the NAIA after passing through the metal detector booth that emitted a beeping sound. Since the frisker noticed something bulging at accused's abdomen, thighs and genital area, which felt like packages containing rice granules, accused was subjected to a thorough physical examination inside the ladies' room. Three sealed packages were taken from accused's body which when submitted for laboratory examination yielded positive results for methamphetamine hydrochloride or shabu. Accused was forthwith arrested and prosecuted for illegal possession of a regulated drug.

Affirming accused Canton's conviction for the crime of illegal possession of shabu, we ruled that accused-appellant was lawfully arrested without a warrant after being caught in flagrante delicto. We further held that the scope of a search pursuant to airport security procedure is not confined only to search for weapons under the "Terry search"[19] doctrine. The more extensive search conducted on accused Canton was necessitated by the discovery of packages on her body, her apprehensiveness and false statements which aroused the suspicion of the frisker that she was hiding something illegal. Thus:

x x x. It must be repeated that R.A. No. 6235 authorizes search for prohibited materials or substances. To limit the action of the airport security personnel to simply refusing her entry into the aircraft and sending her home (as suggested by appellant), and thereby depriving them of "the ability and facility to act accordingly, including to further search without warrant, in light of such circumstances, would be to sanction impotence and ineffectivity in law enforcement, to the detriment of society." Thus, the strip search in the ladies' room was justified under the circumstances.[20] (*Emphasis supplied*)

The search of the contents of petitioner's short pants pockets being a valid search pursuant to routine airport security procedure, the illegal substance (marijuana) seized from him was therefore admissible in evidence. Petitioner's reluctance to show the contents of his short pants pocket after the frisker's hand felt the rolled papers containing marijuana, and his nervous demeanor aroused the suspicion of the arresting officers that he was indeed carrying an item or material subject to confiscation by the said authorities.

The trial and appellate courts correctly gave credence to the straightforward and candid testimonies of PO1 Trota-Bartolome and NUP Soriano on the frisking of petitioner at the pre-departure area, during which the two rolled papers containing dried marijuana fruiting tops were found in his possession, and on petitioner's immediate arrest and investigation by police officers from the 2nd PCAS and PDEA teams stationed at the airport. As a matter of settled jurisprudence on illegal possession of drug cases, credence is usually accorded the narration of the incident by the apprehending police officers who are presumed to have performed their duties in a regular manner.[21]

Petitioner reiterates his defense of being a victim of an alleged frame-up and extortion. However, the CA found his claim unworthy of belief considering that there is no evidence that the apprehending police authorities had known petitioner before he was caught and arrested for possession of marijuana. The CA aptly observed:

It bears stressing that while the defense of Sales is anchored heavily on his theory of purported frame-up and extortion, nonetheless Sales' testimony is without any allegation that the police and security personnel who participated in his arrest, investigation and detention have demanded money in exchange for his freedom, the withdrawal of the drugs charge against him, or otherwise their desistance from testifying against him in court. True enough, Sales himself admitted in the course of the trial that the security and police personnel demanded him to turn over and surrender all his possessions, to wit: cellular phone, plane ticket and boarding pass, except his money (TSN, April 16, 2008, p. 18). This, to the mind of this Court, strongly belied Sales' imputation of frame-up by the police to secure monetary gain.[22] (Emphasis and underscoring in the original)

Petitioner questions the integrity of the drug specimen supposedly confiscated from him at the airport by PO1 Trota-Bartolome. He maintains that there was no evidence adduced to assure that those items that reached the Chemist were the same items which were taken from him. This is crucial since the Chemist had said that the items were brought to her, not by the PNP officer, but another person (SPO2 Rosendo Olandesca of PDEA) who was not presented as witness.

As a mode of authenticating evidence, the chain of custody rule requires that the presentation and admission of the seized prohibited drug as an exhibit be preceded by evidence to support a finding that the matter in question is what the proponent claims it to be. This requirement is essential to obviate the possibility of substitution as well as to ensure that doubts regarding the identity of the evidence are removed through the monitoring and tracking of the movements and custody of the seized prohibited item, from the accused, to the police, to the forensic laboratory for examination, and to its presentation in evidence in court. Ideally, the custodial chain would include testimony about every link in the chain or movements of the illegal drug, from the moment of seizure until it is finally adduced in evidence. It cannot be overemphasized, however, that a testimony about a perfect chain is almost always impossible to obtain.[23]

The identity of the seized substance in dangerous drug cases is thus established by showing its chain of custody. Section 1(b) of Dangerous Drugs Board Regulation No. 1, Series of 2002 defined the concept of "chain of custody" as follows:

b. "Chain of Custody" means the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction. Such record of movements and custody of seized item shall include the identity and signature of the person who held temporary custody of the seized item, the date and time when such transfer of custody were made in the course of safekeeping and use in court as evidence, and the final disposition[.]

The rule on chain of custody under R.A. No. 9165 and its implementing rules and regulations (IRR) expressly demands the identification of the persons who handle the confiscated items for the purpose of duly monitoring the authorized movements of the illegal drugs and/or drug paraphernalia from the time they are seized from the accused until the time they are presented in court.[24] We have held, however, that the failure of the prosecution to show compliance with the procedural requirements provided in Section 21, Article II of R.A. No. 9165 and its IRR is not fatal and does not automatically render accused-appellant's arrest illegal or the items seized/confiscated from him inadmissible.[25] What is of utmost importance is the preservation of the integrity and evidentiary value of the seized items, as the same would be utilized in the determination of the guilt or innocence of the accused.[26] As long as the chain of custody remains unbroken, the guilt of the accused will not be affected.[27]

After a thorough review of the records, we hold that the prosecution in this case has established by facts proved at the trial that the chain of custody requirement was not broken.

During her direct-examination, PO1 Trota-Bartolome narrated clearly and consistently how she obtained initial custody of the seized dangerous drug while on duty at the airport's pre-departure area. Said witness identified Exhibits "G" and "H" with markings "SBH-A" and "SBH-B" presented in court to be the same dried marijuana fruiting tops in two rolled papers that they found in the possession of petitioner while the latter was being frisked by Soriano. She also testified that petitioner and the confiscated marijuana were promptly brought to the PDEA team stationed at the airport where it was marked in her presence by the assigned officer, Samuel B. Hojilla, using his own initials.[28] The two rolled papers containing marijuana fruiting tops with markings "SBH-A" and "SBH-B" was submitted to the PNP Crime Laboratory on the same day by SPO2 Rosendo Olandesca.[29] Police Inspector Engr. Sandra Decena-Go, Forensic Chemical Officer at the PNP Crime Laboratory likewise testified that on the same day, she personally received from SPO2 Olandesca the letter-request together with the seized dried marijuana fruiting tops in two rolled papers (sheet cigarette wrapper) like improvised cigarette sticks, marked as "SBH-A" and "SBH-B" and wrapped in white bond paper.[30] After describing the condition of the specimen at the time she received it, P/Insp. Decena-Go confirmed the findings of the chemical analysis of the said substance already presented in court, and identified her Initial Laboratory Report and Certification, both dated May 24, 2003, stating that the qualitative examination gave positive results for the presence of Marijuana.[31]

We find no merit in petitioner's argument that the non-presentation of SPO2 Olandesca and PO2 Hojilla as witnesses is fatal to the prosecution's case. As this Court held in *People v. Amansec*[32]:

x x x there is nothing in Republic Act No. 9165 or in its implementing rules, which requires each and everyone who came into contact with the seized drugs to testify in court. "As long as the chain of custody of the seized drug was clearly established to have not been broken and the prosecution did not fail to identify properly the drugs seized, it is not indispensable that each and every person who came into possession of the drugs should take the witness stand." This Court, in *People v. Hernandez*,[33] citing *People v. Zeng Hua Dian*,[34] ruled:

After a thorough review of the records of this case we find that the chain of custody of the seized substance was not broken and that the prosecution did not fail to identify properly the drugs seized in this case. The non-presentation as witnesses of other persons such as SPO1 Grafia, the evidence custodian, and PO3 Alamia, the officer on duty, is not a crucial point against the prosecution. The matter of presentation of witnesses by the prosecution is not for the court to decide. 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.[35]

In the light of the testimonial, documentary and object evidence on record, the CA correctly concluded that the identity, integrity and probative value of the seized marijuana were adequately preserved. The prosecution has proved with moral certainty that the two pieces of rolled papers containing dried marijuana fruiting tops presented in court were the same items seized from petitioner during the routine frisk at the airport in the morning of May 24, 2003. Its presentation in evidence as part of the corpus delicti was therefore sufficient to convict petitioner.

As to the penalty imposed by the RTC, we find the same in order and proper.

WHEREFORE, the petition for review on certiorari is DENIED. The Decision dated September 30, 2009 and Resolution dated January 27, 2010 of the Court of Appeals in CA-G.R. CR No. 31942 are hereby AFFIRMED and UPHELD.

With costs against the petitioner.

SO ORDERED.

Sereno, C.J., (Chairperson), Leonardo-De Castro, Bersamin, and Reyes, JJ., concur.

[1] Rollo, pp. 27-41. Penned by Associate Justice Rosmari D. Carandang with Associate Justices Arturo G. Tayag and Michael P. Elbinias concurring.

[2] Id. at 42-43.

[23] CA rollo, pp. 18-28. Penned by Judge Pedro B. Corales

[4] Records, p. 1.

[5] Rollo, p. 30.

[6] Id. at 30-31.

[7] Exhibit "I" (Booking Sheet/Arrest Report), folder of exhibits, pp. 9-10.

[8] Also referred to as Hubilla in some parts of the records.

[9] TSN, February 2, 2005, pp. 7-8, 12-13.

[10] Exhibits "E" and "F," folder of exhibits, pp. 7-8.

[11] TSN, April 16, 2008, pp. 3-12.

[12] Id. at 12-16.

[13] CA rollo, p. 28.

[14] Rollo, p. 18.

[15] People v. Del Norte, G.R. No. 149462, March 29, 2004, 426 SCRA 383, 388.

[16] 401 Phil. 734 (2000).

[17] Id. at 743.

[18] 442 Phil. 743 (2002).

[19] From the US Supreme Court decision in Terry v. Ohio, 392 U.S. 1, 20 L. Ed. 2nd 889 (1968) cited in People v. Canton, id. at 756-757.

The Terry search or the "stop and frisk" situation refers to a case where a police officer approaches a person who is acting suspiciously, for purposes of investigating possibly criminal behavior in line with the general interest of effective crime prevention and detection. To assure himself that the person with whom he is dealing is not armed with a weapon that could unexpectedly and fatally be used against him, he could validly conduct a carefully limited search of the outer clothing of such person to discover weapons which might be used to assault him.

[20] People v. Canton, id. at 757-758.

[21] Castro v. People, G.R. No. 193379, August 15, 2011, 655 SCRA 431, 441.

[22] Rollo, p. 37.

[23] Castro v. People, supra note 21, at 440.

- [24] *People v. Bautista*, G.R. No. 177320, February 22, 2012, 666 SCRA 518, 533.
- [25] *People v. Rosialda*, G.R. No. 188330, August 25, 2010, 629 SCRA 507, 520-521, citing *People v. Rivera*, G.R. No. 182347, October 17, 2008, 569 SCRA 879, 897-898.
- [26] *Id.* at 521, citing *People v. Del Monte*, G.R. No. 179940, April 23, 2008, 552 SCRA 627, 636.
- [27] *People v. Manlangit*, G.R. No. 189806, January 12, 2011, 639 SCRA 455, 469-470, citing *People v. Rosialda*, *supra* note 25, at 522.
- [28] TSN, February 2, 2005, pp. 6-10, 12-14.
- [29] Exhibit “D,” folder of exhibits, p. 6.
- [30] Exhibit “D-2,” *id.*; TSN, August 16, 2005, pp. 11-16, 33-43, 51-52, 58-60.
- [31] Exhibits “E” and “F,” *id.* at 7-8; *id.* at 18-22.
- [32] G.R. No. 186131, December 14, 2011, 662 SCRA 574.
- [33] G.R. No. 184804, June 18, 2009, 589 SCRA 625, 647-648.
- [34] G.R. No. 145348, June 14, 2004, 432 SCRA 25, 32.
- [35] *People v. Amansec*, *supra* note 32, at 595.

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