

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. EMILIANO BATERINA Y CABADING, ACCUSED-APPELLANT.

G.R. No. 236259. September 16, 2020

Ponente: LAZARO-JAVIER, J.

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LAZARO-JAVIER, J.:

The Case

Appellant Emiliano Bateria y Cabading assails the Court of Appeals' Decision[1] dated May 12, 2017, affirming his conviction for violation of Section 5, Article II of Republic Act No. 9165 (RA 9165).[2]

Proceedings Before the Trial Court

The Charge

By Information[3] dated April 4, 2010, appellant Emiliano Bateria, together with Josefa Dayao, Ben Pakoyan, and Melina Puklis was charged with violation of Section 5 in relation to Section 26, Article II of RA 9165, viz.:

That on or about the 3[rd] day of August 2010 in the Municipality of San Gabriel, Province of La Union, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused conspiring, confederating and mutually helping with one another, did then and there willfully, unlawfully, feloniously and knowingly transport and deliver marijuana fruiting tops with a total weight of FORTY EIGHT THOUSAND FIVE HUNDRED SIXTY FIVE POINT SIXTY EIGHT (48,565.683 grams) with the use of Red Owner Type Jeep with plate no. PGE 708, without the necessary authority or permit from the proper government authorities.

Contrary to law.

The case was raffled to the Regional Trial Court (RTC) – Branch 66, San Fernando City, La Union.

On arraignment, appellant and his co-accused pleaded "not guilty." [4] Trial ensued.

The Prosecution's Evidence

The testimonies of Police Officer 2 Magno Olete (PO2 Olete) of Philippine National Police (PNP) San Gabriel, La Union, Police Senior Inspector Reynaldo Soria (PSI Soria) of La Union Police Provincial Office, Police Inspector Maria Theresa Amor Manuel of PNP San Fernando La Union Regional Crime Laboratory Office, Barangay Captain Romeo Estolas, Jr. (Barangay Captain Estolas), and Media Representative Nestor Ducusin may be summarized in this wise:

On August 2, 2010, PSI Soria received a text message from a concerned citizen that men and women on board a jeep were transporting a large volume of dried marijuana leaves.[5] PSI Soria immediately coordinated with the San Gabriel Police Station through Police Senior Inspector Eduardo Sarmiento (PSI Sarmiento). PSI Sarmiento conducted a briefing with his team composed of Police Officer 3 Reynaldo Abalos (PO3 Abalos), PO2 Olete, and

Police Officer 1 Allain Ariz (PO1 Ariz).[6] The San Gabriel Police, along with PSI Soria and Police Chief Inspector Godfrey Bustolan (PCI Bustolan) immediately put up a checkpoint at Sitio Quilat, Barangay Bumbuneg, San Gabriel, La Union.[7]

Early morning of the following day, August 3, 2010, around 2:30, the team flagged down an owner-type jeepney driven by appellant Baterina.[8] Dayao, Pakoyan, Puklis, and a minor child were on board.[9] PSI Soria walked to the back of the jeepney which emitted the peculiar odor of marijuana.[10] He looked inside and saw a slightly opened bag containing marijuana bricks wrapped with a yellow tape.[11] The police officers then searched the vehicle and recovered several plastic bags also containing bricks of marijuana leaves.

At the situs criminis, and in the presence of appellant and his co-accused, PO2 Olete marked the seized items, viz.: one (1) green bag marked "A" containing four (4) bricks of marijuana, respectively marked as MOO and RTA A-1 to A-4;[12] one (1) black bag marked "B" containing two (2) bricks of marijuana, respectively marked MOO and RTA B-1 to B-2;[13] one (1) yellow bag marked "C" containing eight (8) bricks of marijuana, respectively marked as MOO and RTA C-1 to C-8;[14] one (1) red bag marked "D" containing five (5) bricks of marijuana, respectively marked as MOO and RTA D-1 to D-5;[15] and one (1) blue bag marked "E" containing four (4) bricks of marijuana, respectively marked as MOO and RTA E-1 to E-4.[16]

The team brought appellant, Dayao, Pakoyan, Puklis, and the seized items to the San Gabriel Police Station for documentation. PO2 Olete prepared the inventory of the seized items in the presence of appellant and his co-accused, Barangay Captain Estolas, a representative from the Department of Justice (DOJ) Luciano Trinidad, and media representative Ducusin. PO2 Olete also took pictures of the seized items[17] and prepared the Request for Laboratory Examination.[18]

Thereafter, PO2 Olete turned over the seized items and the Request for Laboratory Examination to Senior Police Officer 1 Stanley Campit (SPO1 Campit) who brought them to the PNP Regional Crime Laboratory, San Fernando La Union. There, Forensic Chemist Maria Theresa Amor Manuel received the same and did a chemical analysis thereof.[19]

Per Chemistry Report No. D-073-10 dated August 3, 2010, Forensic Chemist Manuel confirmed that the specimens weighed forty-eight thousand five hundred sixty five point sixty eight (48,565.68) grams and were found positive for marijuana, a dangerous drug.[20]

The prosecution submitted the following evidence: 1) Joint Affidavit;[21] 2) Request for Laboratory Examination;[22] 3) Chemistry Report No. D-073-10;[23] 4) Police Report;[24] 5) Appellant's Driver's license;[25] 6) Certificate of Inventory;[26] 7) Photographs of seized items;[27] and 8) the seized marijuana bricks.[28]

The Defense's Version

Appellant testified that in the evening of August 2, 2010,[29] he received a text message from his co-accused Melina Puklis[30] asking his help to bring her child to a hospital in Balballayang, San Gabriel, La Union.[31] He obliged and picked up Puklis and her child, Dayao, and Pakoyan. Appellant noticed they were carrying bags. When he asked them what was inside the bags they replied it was just clothes.[32] On their way to the hospital, the police officers flagged him down, requested him and his co-accused to alight from the vehicle, and bring out the bags.[33] When the police officers opened the bags, he was surprised that it contained marijuana bricks.[34] He and his co-accused were immediately brought to the San Gabriel, La Union police station.

Accused Melina Puklis, Josefa Dayao, and Ben Pakoyan on the other hand, testified that Dayao hired appellant's services to drive them and Puklis' child to the hospital. Inside appellant's owner-type jeep, they noticed five (5)

plastic bags. They asked appellant about the bags and the latter replied he was bringing them to Baguio City. En route the hospital, they were flagged down by the San Gabriel Police. They were asked to alight from the vehicle and were informed that the bags inside appellant's vehicle contained marijuana.[35]

The Trial Court's Ruling

By Decision[36] dated March 12, 2015, the trial court found appellant guilty as charged but acquitted his co-accused for lack of evidence to prove that they acted in conspiracy with appellant, thus:

WHEREFORE, in view of the foregoing, accused EMILIANO BATERINA is hereby found GUILTY beyond reasonable doubt of the crime charged in the Information and is hereby sentenced to suffer the penalty of life imprisonment and to pay a fine of P500,000.00.

Accused JOSEFA DAYAO, BEN PAKOYAN, AND MELINA PUKLIS are hereby ACQUITTED, prosecution failed to establish the guilt of the three accused beyond reasonable doubt. Consequently, accused Josefa Dayao, Ben Pakoyan and Melina Puklis are ordered released from custody, unless they are being charged from some other lawful cause/s.

The 48,565.68 grams of marijuana which are in the custody of the prosecution are ordered confiscated and turned over to the Philippine Drug Enforcement Agency (PDEA) for destruction in the presence of Court personnel and media.

SO ORDERED.[37]

The trial court ruled that the police officers had probable cause to flag down and search appellant's vehicle. While inspecting appellant's vehicle, PSI Soria smelled the distinctive odor of marijuana and in fact found marijuana bricks inside the vehicle.[38] The very act of transporting illegal drugs is *malum prohibitum* where intent or knowledge of what is being transported is not necessary.[39] Thus, appellant's argument that he had no knowledge of the contents of the bags had no merit. More, the seized illegal drugs from appellant were the same drugs presented as evidence in court.[40]

The Proceedings before the Court of Appeals

On appeal, appellant argued: his co-accused owned the bags and he had no knowledge that the same contained marijuana bricks;[41] the police officers had no probable cause to search his vehicle.[42] The search was not valid nor was his arrest, therefore, the seized items are inadmissible in evidence. Finally, the trial court erred when it overlooked the prosecution's breach of the chain of custody rule.[43]

For its part, the Office of the Solicitor General (OSG) through Assistant Solicitor General Ellaine Rose A. Sanchez-Corro and State Solicitor Manelyn E. Caturla, countered in the main: 1) the police officers had probable cause to effect a warrantless search and seizure;[44] 2) appellant was caught in *flagrante delicto*[45] at a checkpoint transporting marijuana; 3) appellant's objection to the legality of his arrest was deemed waived because he did not raise it prior to his plea;[46] and 4) the integrity and evidentiary value of the seized items negated appellant's argument that there was breach in the chain of custody.[47]

The Court of Appeals' Ruling

By Decision[48] dated May 12, 2017, the Court of Appeals affirmed. It held that the constitutional proscription against warrantless searches and seizures admits of certain exceptions, i.e., where the search and seizure happened in a moving vehicle.[49] The police officers here had probable cause to search appellant's vehicle which upon inspection, emitted the odor of marijuana. They in fact readily confirmed that marijuana bricks were inside the vehicle.[50] The search was valid and so was appellant's arrest.[51] Besides, it was too late in the day to raise the

issue against the legality of his arrest.[52] Finally, the chain of custody was likewise shown to have not been breached.[53]

The Present Appeal

Appellant now seeks affirmative relief from the Court and pleads anew for his acquittal.

In compliance with Resolution[54] dated March 19, 2018, the OSG manifested that in lieu of a supplemental brief, it was adopting its appellee's brief before the Court of Appeals.[55]

On September 10, 2018, appellant filed his supplemental brief reiterating that since his arrest was unlawful, the ensuing warrantless search and seizure were illegal.[56] Consequently, the illegal drugs allegedly seized cannot be used against him for being fruits of a poisonous tree.

Issue

Did the Court of Appeals err when it affirmed appellant's conviction for violation of Section 5, Article II of RA 9165 specifically illegal transporting of forty-eight thousand five hundred sixty-five point sixty-eight (48,565.68) grams of marijuana?

Ruling

The essential element of illegal transporting of dangerous drugs is the movement of the dangerous drugs from one (1) place to another.[57] To establish the guilt of the accused, it must be proved that: (1) the transportation of illegal drugs was committed; and (2) the prohibited drug exists.[58]

In *People v. Asislo*, [59] the Court noted there was no definitive moment when an accused "transports" a prohibited drug. When the circumstances establish the purpose of an accused to transport and the fact of transporting itself, there should be no question as to the perpetration of the criminal act.[60] The fact that there is actual conveyance suffices to support a finding that the act of transporting was committed.[61]

The following facts here are undisputed: 1) On August 2, 2010, the San Gabriel Police together with PSI Soria put a checkpoint at Sitio Quilat, Barangay Bumbuneg, San Gabriel, La Union after PSI Soria received a text message from a concerned citizen that men and women on board a jeep were transporting a large volume of marijuana leaves; 2) In the evening of August 2, 2010, appellant drove his owner-type jeep from his residence to Balballayang, San Gabriel La Union to fetch Puklis who asked for his help to bring her sick child to the hospital; 3) Puklis, Dayao, and Pakoyan boarded appellant's vehicle for the purpose of bringing the child to the hospital; 4) En route the hospital early morning of the next day, they were flagged down as they reached the checkpoint at Sitio Quilat, Barangay Bumbuneg, San Gabriel, La Union; 5) PSI Soria approached appellant, Puklis, Dayao, and Pakoyan and asked them to alight from the vehicle; 6) When he proceeded to the back of the owner-type jeepney, he readily smelled the distinctive odor of marijuana leaves; 7) PSI Soria instantly saw one (1) slightly opened bag inside; 8) When he looked inside the bag, he saw marijuana bricks wrapped with a yellow tape; 9) This led the police officers to do a thorough search of appellant's owner-type jeep which yielded four (4) more plastic bags containing marijuana bricks.

Appellant was in the act of transporting the drugs when the police officers flagged him down at checkpoint. In fact, he had already been moving the drugs from one place to another as he drove his vehicle from his point of origin up until he reached the checkpoint where the drugs were seized and he and his co-accused got arrested.

In any event, the Court ruled that the intent to transport illegal drugs is presumed whenever a huge volume thereof is found in the possession of the accused until the contrary is proved.[62]

In *People v. Asislo*,^[63] the Court found three (3) plastic bags of marijuana leaves and seeds as a considerable quantity of drugs and that possession of a similar amount of drugs showed appellant's intent to sell, distribute, and deliver the same.

In *People v. Alacdis*,^[64] appellant was found in possession of almost one hundred ten (110) kilos of marijuana. The Court ruled that such sheer volume by itself is a clear indicium of one's purpose to transport these drugs.

Here, forty-eight thousand five hundred sixty-five point sixty-eight (48,565.68) grams or more than forty-eight (48) kilos of marijuana is by no means a miniscule amount clearly indicating appellant's intent to deliver and transport them in violation of Section 5, Article II of RA 9165.

To negate liability, however, appellant claims these bags containing marijuana bricks did not belong to him but to Dayao, Pakoyan, and Puklis. He also denies knowledge of these contents.

The argument must fail.

The very act of transporting methamphetamine hydrochloride is *malum prohibitum* punishable under RA 9165. In *People v. Morilla*,^[65] the Court held that the fact of transportation of the bags containing volumes of marijuana bricks need not be accompanied by proof of appellant's criminal intent, motive, or knowledge of the contents thereof.^[66] Similarly, *People v. Noah*^[67] ordains that proof of ownership and intent are not essential elements of the crime of illegal transporting of dangerous drugs.

Appellant further argues against his arrest allegedly because when the police officers searched his vehicle, they had no probable cause to do so.

We are not persuaded.

First, the right to question one's arrest should be made before one enters his or her plea on arraignment. *People v. Alunday*^[68] is relevant:

The Court has consistently ruled that any objection involving a warrant of arrest or the procedure for the acquisition by the court of jurisdiction over the person of the accused must be made before he enters his plea; otherwise, the objection is deemed waived. We have also ruled that an accused may be estopped from assailing the illegality of his arrest if he fails to move for the quashing of the information against him before his arraignment. And since the legality of an arrest affects only the jurisdiction of the court over the person of the accused, any defect in the arrest of the accused may be deemed cured when he voluntarily submits to the jurisdiction of the trial court. (Emphasis supplied)

People v. Araza,^[69] too, further clarified that the illegal arrest of an accused is not sufficient cause for setting aside a valid judgment rendered upon a sufficient complaint after a trial free from error. It will not even negate the validity of the conviction of the accused.

Here, appellant failed to object to his warrantless arrest before he entered his plea of "not guilty." He likewise did not move to quash the Information or to exclude the evidence subject of the search and seizure prior to his arraignment. In fact, he actively participated in the proceeding before the trial court. He, therefore, was deemed to have voluntarily submitted himself to the jurisdiction of the trial court and waived any objection to his warrantless arrest.

Be that as it may, in *People v. Cogaed*,^[70] the Court noted that one of the recognized instances of permissible warrantless search is the search of a moving vehicle. Police officers cannot be expected to appear before a judge and apply for a search warrant when time is of the essence considering the efficiency of vehicles in facilitating transactions involving contraband or dangerous articles.^[71] A checkpoint search is a variant of a search of a

moving vehicle[72] where only visual searches or inspections are allowed. An extensive search may be conducted on a vehicle at a checkpoint when law enforcers have probable cause, i.e., upon a belief, that the vehicle's driver or passengers committed a crime or when the vehicle contains instruments of an offense[73] which by law is subject to seizure and destruction.[74]

Here, the police officers flagged down appellant's vehicle at a checkpoint. When PSI Soria approached the owner-type jeepney, he readily smelled the distinctive odor of marijuana. Notably, an owner-type jeepney has no windows or glass-enclosures. He was then prompted to inspect the vehicle where he saw one (1) bag slightly opened. When he looked inside the bag, he saw marijuana bricks wrapped with a yellow tape. On further search, the police officers found four (4) more plastic bags containing the same dangerous drugs. At that moment, the police officers had probable cause to search appellant's vehicle and seize the marijuana bricks found therein. For appellant was (1) caught in the act of committing the crime of transporting dangerous drugs, and (2) his vehicle contained contraband items pertaining to the offense committed. In this regard, the evidence obtained from a valid search of appellant's vehicle and the consequent seizure of the marijuana bricks found inside are not fruits of a poisonous tree. They are in fact the corpus delicti itself. Appellant's warrantless arrest as a consequence thereof was lawful.

The Court, in *Caballes v. Court of Appeals*,^[75] elucidated that police officers had probable cause to conduct an extensive search of moving vehicle in situations where the police officers had received a confidential report from informers that a sizeable volume of marijuana would be transported along the route where the search was conducted; and when the moving vehicle was stopped on the basis of the intelligence information, there had emanated from a package inside the vehicle a distinctive smell of marijuana. The police officers not just relied solely on the basis of the tipped information but also their personal experience, i.e., when they were able to smell the peculiar odor of marijuana from the package inside the vehicle which prompted them to do an extensive search.

Another case on probable cause involving illegal drugs is *People v. Mariacos*.^[76] There, a police officer received an information from a secret agent that a baggage of marijuana had been loaded on a passenger jeepney that was about to leave for the poblacion. The agent mentioned three (3) bags and one (1) blue plastic bag. The agent further described a backpack bag with an "O.K." marking. On the basis of the tip, a police officer did surveillance operations on board a jeepney. When he saw the bag with an "O.K." mark, he peeked inside and smelled the distinct odor of marijuana emanating from the bag. The Court ruled that tipped information and the police officer's personal observations gave rise to probable cause that rendered the warrantless search valid.

Appellant, next argues that the police officers failed to comply with the chain of custody rule. He claims that the prosecution failed to testify who brought the items to the police station^[77] and later to the PNP Crime Laboratory for examination.^[78]

We disagree.

Section 21 of RA 9165 prescribes the standard in preserving the corpus delicti in illegal drug cases, viz.:

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;

(2) Within twenty-four (24) hours upon confiscation/seizure of dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment, the same shall be submitted to the PDEA Forensic Laboratory for a qualitative and quantitative examination;

(3) A certification of the forensic laboratory examination results, which shall be done under oath by the forensic laboratory examiner, shall be issued within twenty-four (24) hours after the receipt of the subject item/s: Provided, That when the volume of the dangerous drugs, plant sources of dangerous drugs, and controlled precursors and essential chemicals does not allow the completion of testing within the time frame, a partial laboratory examination report shall be provisionally issued stating therein the quantities of dangerous drugs still to be examined by the forensic laboratory: Provided, however, That a final certification shall be issued on the completed forensic laboratory examination on the same within the next twenty-four (24) hours; (Emphasis supplied)

xxx

The Implementing Rules and Regulations of RA No. 9165 further decrees:

Section 21. (a) The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof: Provided, that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; Provided, further, that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items. (Emphasis and underscoring supplied)

The incident here happened before the enactment of RA 10640 in 2014, thus, the applicable law is RA 9165. Section 21 of its implementing rules requires that the physical inventory and photograph of the drugs should be done immediately after their seizure and confiscation in the presence of no less than three (3) witnesses, namely: (a) a representative from the media; (b) a representative from the Department of Justice (DOJ); and (c) any elected public official - - - who shall be required to sign copies of the inventory and given copy thereof.

This is echoed in Section 2 (a) of the Dangerous Drugs Board (DDB) Regulation No. 1, Series of 2002, to wit:

a. The apprehending team having initial custody and control of dangerous drugs or controlled chemical or plant sources of dangerous drugs or laboratory equipment shall immediately, after the seizure and confiscation, physically inventory and photograph the same in the presence of:

- (i) the person from whom such items were confiscated and/or seized or his/her representative or counsel;
- (ii) a representative from the media;
- (iii) a representative from the Department of Justice; and,
- (iv) any elected public official;

who shall be required to sign copies of the inventory report covering the drugs/equipment and who shall 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 seizure without warrant; Provided further that non-compliance with these requirement under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team x x x. (Emphasis supplied)

Records show that upon seizure of the bags containing marijuana bricks here, PO2 Olete immediately marked them in the presence of appellant and his co-accused right at the place of arrest and seizure.

After the marking, appellant and the seized items were brought to San Gabriel, La Union, Police Station where PO2 Olete did the inventory in the presence of appellant, his co-accused, Barangay Captain Estolas, DOJ representative Luciano Trinidad, and media representative Nestor Ducusin.[79] Notably, the presence of the required insulating witnesses served to ensure the integrity and evidentiary value of the seized drugs. PO2 Olete also took photographs of the seized items.[80]

PO2 Olete and PSI Soria testified, thus:

PO2 Olete's testimony:

Q: After you made the marking that you mentioned a while ago, what happened next?

A: We brought the bags back into the vehicle and we proceeded to the police station, sir.

Q: When you were at the police station, what did you do there?

A: xxx we conducted documentation and we prepared letter blotter.

Q: Aside from the blotter, what other documents did you prepare mister witness?

A: Inventory sir.[81]

PSI Soria's testimony:

Q: Why do you say that that is the Inventory you referred to?

A: I was present during that time, sir.

Q: In this inventory, there is a signature above the name Magno Olete, whose signature is this?

A: Magno Olete, Sir.

Q: There is also a signature here, whose signature is this?

A: Estolas, sir.

Q: And who is Estolas?

A: The Barangay Captain of Bunbeneg, sir.

Q: There is also a signature here, whose signature is this?

A: Nestor Ducusin sir, the media.

Q: And who is Nestor Ducusin?

A: The media representative, sir.

Q: There is also a signature here, whose signature is this?

A: The DOJ representative, sir.[82]

In *Macad v. People*,^[83] the Court decreed that under the Implementing Rules and Regulations of RA 9165, the physical inventory and photographing of the seized items shall be conducted at the place where the search warrant is served and the marking should be done upon immediate confiscation of the items in question. The Court though notes that Section 21 itself provides an exception in cases involving warrantless seizures where the physical inventory and photographing of the seized items may be conducted at the nearest police station or the nearest office of the apprehending officer/team, whichever is practicable, as in this case. Macad enunciated:

As a rule, under the IRR, the physical inventory and photograph of the seized items shall be conducted at the

place where the search warrant is served. Likewise, the marking should be done upon immediate confiscation. However, Section 21 of the IRR also provides an exception that the physical inventory and photography of the seized items may be conducted at the nearest police station or the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures.[84]

PO2 Olete testified that he handed the request for laboratory examination and the specimens to SPO2 Campit who delivered the same to the PNP Regional Crime Laboratory, San Gabriel, La Union. Although SPO2 Campit did not testify in court, the same does not necessarily cast doubt on the integrity of the seized items. *People v. Padua*[85] decreed:

Further, not all people who came into contact with the seized drugs are required to testify in court. There is nothing in Republic Act No. 9165 or in any rule implementing the same that imposes such requirement. As long as the chain of custody of the seized drug was clearly established not to have been broken and that 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. x x x (Emphasis and underscoring supplied)

At the PNP Regional Crime Laboratory, Forensic Chemist Manuel received the request for laboratory examination and the specimens. Per her Chemistry Report No. D-073-10 dated August 3, 2010, she confirmed that the specimens yielded positive results for marijuana. She also testified that the seized items presented as evidence in court were the same items she subjected to qualitative examination.

Her Chemistry Report conformed with the details found in the inventory prepared by PO2 Olete. Thus, the prosecution's formal offer of evidence indicated that Exhibits H to H-3, H-4 to H-5, H-6 to H-13, H-14 to H-18, H-19 to H-22, and H-23 to H-27 represented the seized drugs themselves weighing forty-eight thousand five hundred sixty-five point sixty-eight (48,565.68) grams.[86] Notably, the defense admitted the genuineness and due execution of Forensic Chemist Manuel's Report[87] and that the seized items reflected in her report were the same items presented in court as evidence.[88]

Indubitably, the identity and integrity of marijuana bricks remained intact at the time they were seized from appellant up until they were turned over to the forensic chemist for qualitative examination and finally presented as evidence in court.

In *People v. Sic-Open*,[89] the forensic chemist testified that the items presented as evidence against the accused for violation of Section 5, Article II of RA 9165 were the same items which had undergone laboratory examination as reflected in her report. The Court ruled that this documentary and testimonial evidence presented by the prosecution supported the conclusion that the chain of custody had not been breached.

At any rate, the Court, once again, notes the large amount of marijuana seized by the police officers. We held in *Malillin v. People*[90] that the likelihood of tampering, loss, or mistake with respect to a seized illegal drug is greatest when the item is small and is one that has physical characteristics fungible in nature. But in *People v. Bayang*,[91] we specifically pronounced that strict adherence to Section 21 of RA 9165 is required where the quantity of illegal drugs seized is minuscule, since it is highly susceptible to planting, tampering or alteration of evidence.

Applying *Malillin* and *Bayang* here, the forty-eight thousand five hundred sixty-five point sixty-eight (48,565.68) grams or more than forty-eight (48) kilos of marijuana here is by no means a minuscule amount, logically precluding the probability of planting, tampering, or alteration.

Going now to the credibility of PO2 Olete and PSI Soria as witnesses, both the trial court and the Court of Appeals found their testimony credible, straightforward, and direct. More important, both courts found that PO2

Olete and PSI Soria were not shown to have been impelled by malice or ill will to falsely charge appellant with such heinous offense of illegal transporting of a huge amount of marijuana. The Court, therefore, finds no reason to doubt the credibility of these witnesses.

Indeed, in cases involving violations of RA 9165, credence should be given to the narration of the incident by the prosecution witnesses especially when they are police officers who are not only presumed but have been clearly shown to have performed their official duty in a regular manner. *People v. Cabiles*[92] is apropos, viz.:

The direct account of law enforcement officers enjoys the presumption of regularity in the performance of their duties. It should be noted that "unless there is clear and convincing evidence that the police officers were inspired by any improper motive or did not properly perform their duty, their testimonies on the operation deserve full faith and credit." Thus, unless the presumption is rebutted, it becomes conclusive. Since, accused-appellant failed to present or refute the evidence presented against him, therefore, the conduct of the operation of the police officers prevails and is presumed regular. (Emphasis and underscoring supplied)

Surely, appellant's bare denial and theory of frame up cannot prevail over the positive testimony of PO2 Olete and PSI Soria, let alone, the presumption of regularity accorded them in the performance of their official duty.

The Court of Appeals, therefore, did not err when it affirmed the trial court's verdict of conviction against appellant for violation of Section 5, Article II of RA 9165 as well as the penalty of life imprisonment and fine imposed on him.

ACCORDINGLY, the appeal is DISMISSED and the Decision dated May 12, 2017 of the Court of Appeals in CA-G.R. CR HC No. 07617, AFFIRMED. Appellant Emiliano Baterina y Cabading is found GUILTY of illegal transporting of forty-eight thousand five hundred sixty-five point sixty-eight (48,565.68) grams of marijuana, a dangerous drug as defined and penalized under Section 5, Article II of Republic Act No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002. He is sentenced to LIFE IMPRISONMENT and ordered to pay a FINE of P500,000.00.

SO ORDERED.

Peralta, C.J. (Chairperson), and Reyes, J. Jr., JJ., concur.

Caguioa, J., see dissenting opinion.

Lopez, J., pls. see concurring opinion.

[1] Penned by Associate Romeo F. Barza and concurred in by Associate Justices Socorro B. Inting and Victoria Isabel A. Paredes, all members of the Special Seventeenth Division, rollo, pp. 2-15.

[2] Comprehensive Dangerous Drugs Act of 2002.

[3] Record, pp. 1-2.

[4] Id. at 44.

[5] TSN, December 9, 2010, p. 5.

[6] Record, pp. 7-8.

[7] TSN, December 9, 2010, p. 6.

[8] Id. at 7.

[9] Id. at 6.

- [10] Id. at 8.
- [11] Id.
- [12] TSN, October 5, 2010, p. 10.
- [13] TSN, October 7, 2010, p. 11.
- [14] TSN, October 5, 2010, p. 12.
- [15] Id. at 14.
- [16] Id. at 15.
- [17] Record, pp. 22-23; TSN, October 7, 2010, p. 20.
- [18] TSN, October 7, 2010, pp. 21-22.
- [19] Record, p. 15.
- [20] Id. at 15.
- [21] Id. at 7-8.
- [22] Id. at 11-12.
- [23] Id. at 15.
- [24] Id. at 17.
- [25] Id. at 21.
- [26] Id. at 22-23.
- [27] Id. at 26-29.
- [28] Id. at 132.
- [29] CA rollo, p. 70.
- [30] TSN, May 28, 2013, p. 7.
- [31] Id. at 3.
- [32] Id. at 4.
- [33] Id. at 5.
- [34] Id.
- [35] CA rollo, pp. 70-71.
- [36] Penned by Judge Victor O. Conception, CA rollo, pp. 68-77.
- [37] Id. at 77.
- [38] Id. at 74.
- [39] Id. at 75.
- [40] Id. at 77.

- [41] Id. at 36.
- [42] Id. at 38.
- [43] Id. at 57.
- [44] Id. at 106-107.
- [45] Id. at 91.
- [46] Id. at 109.
- [47] Id. at 112.
- [48] Rollo, pp. 2-15.
- [49] Id. at 9.
- [50] Id.
- [51] Id.
- [52] Id.
- [53] Id. at 11.
- [54] Id. at 20-21.
- [55] Id. at 22-24.
- [56] Id. at 33.
- [57] *People v. Asislo*, 778 Phil. 509, 522 (2016).
- [58] *People v. Watamama*, 692 Phil. 102, 106 (2012).
- [59] *Supra* note 57 at 523.
- [60] *People v. Mariacos*, 635 Phil. 315, 333 (2010).
- [61] Id.
- [62] *People v. Asislo*, *supra* note 57; *People v. Alacdis*, 811 Phil. 219, 232 (2017).
- [63] Id.
- [64] *Supra* note 62.
- [65] 726 Phil. 244, 252 (2014).
- [66] Id.
- [67] G.R. No. 228880, March 6, 2019.
- [68] 586 Phil. 120, 133 (2008).
- [69] 747 Phil. 20, 32 (2014).
- [70] 740 Phil. 212, 228 (2014).
- [71] *Caballes v. Court of Appeals*, 424 Phil. 263, 278 (2002).

- [72] *People v. Manago*, 793 Phil. 505, 519 (2016).
- [73] *Veridiano v. People*, 810 Phil. 642, 668 (2017).
- [74] *People v. Libnao*, 443 Phil. 506, 515-516 (2003).
- [75] *Supra* note 71.
- [76] *Supra* note 60.
- [77] *Rollo* p. 57.
- [78] *Id.* at 58.
- [79] *Record*, pp. 22-23.
- [80] *CA rollo*, p. 99.
- [81] *TSN*, October 7, 2010, p. 20.
- [82] *TSN*, December 9, 2010, pp. 24-25.
- [83] G.R. No. 227366, August 1, 2018.
- [84] *Id.*
- [85] 639 Phil. 235, 251 (2010).
- [86] *Record*, p. 132.
- [87] *TSN*, September 28, 2010, pp. 5-6.
- [88] *Id.* at 7-8.
- [89] 795 Phil. 859, 868 (2016).
- [90] 576 Phil. 576, 588 (2008).
- [91] G.R. No. 234038, March 13, 2019.
- [92] 810 Phil. 969, 976 (2017).

DISSENTING OPINION

CAGUIOA, J.:

I dissent.

The accused Emiliano Bateria (Bateria) should be acquitted from the charge of violating Section 5 of Republic Act No. (RA) 9165 as the corpus delicti of the crime is inadmissible as evidence and, in any event, there exists reasonable doubt as to his culpability.

Brief review of the facts

Bateria, along with a few others, were charged with a violation of Section 5 of RA 9165, the accusatory portion of the Information reads:

That on or about the 3[rd] day of August 2010 in the Municipality of San Gabriel, Province of La Union,

Philippines, and within the jurisdiction of this Honorable Court, the above-named accused conspiring, confederating and mutually helping one another did then and there willfully, unlawfully, feloniously and knowingly transport and deliver marijuana fruiting tops with a total weight of FORTY EIGHT THOUSAND FIVE HUNDRED SIXTY FIVE POINT SIXTY EIGHT (48,565.683) grams with the use of Red Owner Type Jeep with plate no. PGE 708, without the necessary authority or permit from the proper government authorities.

Contrary to law.[1]

According to the prosecution, the police officers in La Union received a text message from a concerned citizen that men and women would be transporting a large volume of dried marijuana leaves. Based on this tip, the police officers immediately put up a checkpoint. A few hours later, they were able to flag down an owner-type jeep driven by Baterina. There were four other passengers in the jeepney, including a minor child. Afterwards, one of the police officers proceeded to the back of the jeep to see what was inside the jeep and upon looking at a partially opened curtain, he allegedly smelled the odor of marijuana coming from inside the jeep. Thus, an inspection was conducted on the said vehicle in the presence of the barangay captain of the area.

The inspection then led to the discovery of several bags containing a total of 23 bricks of marijuana. The marking and initial inventory of the seized items were then immediately conducted. Subsequently, Baterina and the others were brought to the municipal hall for documentation. In the municipal hall, a full inventory of the seized items was conducted in the presence of all the three required witnesses: an elected official (the barangay captain) and representatives from the media and Department of Justice.

In his defense, Baterina testified that his wife received a text message from one of the passengers asking him to fetch a sick person and bring him to the hospital. It was the usual practice in the municipality to hire private vehicles. Upon meeting the persons who sent him the text message, he saw that they were carrying bags. Baterina was told by the passengers that it only contained their clothes. While traversing the road, the police officers flagged them down and told them to alight from the vehicle. The police officers likewise brought the baggage down to examine them and it was revealed that it contained marijuana, which surprised Baterina. Baterina further testified that he knew the one who texted his wife because she had hired him thrice already in the past.

Baterina's three co-accused, his adult passengers, also testified and they confirmed that they hired Baterina to bring the child to the hospital. However, they claimed that the bags were not theirs but Baterina's. According to them, Baterina told them that he would be transporting the bags to Baguio City.

After trial, the RTC convicted Baterina of the crime but acquitted the others. Upon appeal to the CA, it affirmed Baterina's conviction.

Hence, the present case.

The ponencia affirms the conviction of Baterina, ratiocinating that the crime involved is *malum prohibitum* and that the act of transporting the prohibited drugs need not be proven to be accompanied with criminal intent. Meanwhile, on the argument that the discovery of the prohibited items was borne by an illegal search, the ponencia rules that questions on the illegality of arrest should have been raised prior to the arraignment and, in any event, search of a moving vehicle is a jurisprudentially recognized instance of a valid warrantless search. Finally, the ponencia holds that the chain of custody rule under RA 9165 was likewise followed by the police officers and successfully proven by the prosecution.

While I agree that the chain of custody rule was followed in this case, I find myself, with due respect, disagreeing with the decision to affirm the conviction. In my view, the *corpus delicti* of the crime is inadmissible, and that, in

any event, there is reasonable doubt as to Baterina's guilt.

The discovery of the
marijuana was borne by an
illegal search

It is true, as the ponencia holds, that searches at checkpoints are recognized exceptions to the general requirement of securing a warrant before conducting a search. Searches of moving vehicles, including checkpoint searches, however, must generally be limited only to visual searches in order to be valid. As the Court explained in *Veridiano v. People*[2] (*Veridiano*):

Checkpoints per se are not invalid. They are allowed in exceptional circumstances to protect the lives of individuals and ensure their safety. They are also sanctioned in cases where the government's survival is in danger. Considering that routine checkpoints intrude "on [a] motorist's right to 'free passage'" to a certain extent, they must be "conducted in a way least intrusive to motorists." The extent of routine inspections must be limited to a visual search. Routine inspections do not give law enforcers carte blanche to perform warrantless searches.[3] (Emphasis and underscoring supplied)

An extensive search, however, may still be valid as long as probable cause exists before the search was actually conducted. As the Court held in *People v. Bagista*:^[4]

With regard to the search of moving vehicles, this had been justified on the ground that the mobility of motor vehicles makes it possible for the vehicle to be searched to move out of the locality or jurisdiction in which the warrant must be sought.

This in no way, however, gives the police officers unlimited discretion to conduct warrantless searches of automobiles in the absence of probable cause. When a vehicle is stopped and subjected to an extensive search, such a warrantless search has been held to be valid only as long as the officers conducting the search have reasonable or probable cause to believe before the search that they will find the instrumentality or evidence pertaining to a crime, in the vehicle to be searched.[5] (Emphasis and underscoring supplied)

Here, apart from the tip which the officers received, there was no other fact establishing probable cause. Of the two police officers presented on the stand, neither of them was able to establish that there was probable cause to conduct an extensive search of the vehicle.

PO2 Magno Olete (PO2 Olete) attempted to justify the extensive search by claiming to have seen a plastic bag when he peeped through the curtain. He testified:

Q: And so what did you do when the curtains was (sic) "naka-usli?"

A: We look at the curtain using our flashlight, sir.

Q: And what happened when you looked inside the jeep using flashlight?

A: We saw plastic bags, sir.

Q: And what happened when you saw plastic bags?

A: We saw the plastic bag, sir, we asked the occupants to alight from the vehicle.

Q: And what happened next mister witness?

A: We called on the Barangay captain who is 20 meters away from our check point.

Q: And what happened when the Barangay captain was called by you?

A: When the Barangay captain arrived, we conducted the search.

Q: And what is the result of that search?

A:

When we already conducted the search, sir, we found out that the contents of the plastic bag were bricks of marijuana.[6] (Emphasis supplied)

On cross-examination, he confirmed that they ordered the passengers to step out of the vehicle — thus, an extensive search — only because of their having seen plastic bags:

Q: So, every motor vehicle that would pass in that highway would be flagged down mister witness?

A: Yes, sir.

Q: You also testified during the last hearing that you flagged down an owner type jeep?

A: Yes, sir.

Q: And you used a flashlight to see the contents of the owner type jeep?

A: Yes, sir.

Q:

And upon see[ing] the plastic bag as you testified mister witness, you ordered them to step down from the vehicle?

A: Yes, sir.

Q: So, from that moment that you spotted, as you testified last hearing, you only saw plastic bags?

A: Yes, sir.

Q: So, from that moment mister witness, you did not see any marijuana bricks, alleged marijuana bricks?

A: I saw one plastic bag slightly opened.

Q:

But you did not see any alleged marijuana bricks at that time that you spot your flashlight on that plastic bag?

A: Only one bag that was slightly opened, sir.

Q: No, I am asking you mister witness whether you saw marijuana bricks at that time?

A: None, sir.

Q:

So, you only discovered the marijuana bricks after searching, opening the plastic bag and removing what was on top of that plastic bag?

A: Yes, sir.[7] (Emphasis supplied)

By no stretch, however, could it be reasonably argued that having plastic bags in the vehicle already suffices as probable cause so as to justify an extensive or intrusive search.

The other officer who took the stand, PSI Reynaldo Soria (PSI Soria), also tried to justify the extensive search by claiming that he was able to smell marijuana when he went to the back of the jeep. However, this claim proved to be incredible when tested during the trial, as shown by the following cross-examination of PSI Soria:

Q: Now Mr. Witness, you testified that you can smell marijuana at that time, isn't it?

A: Yes sir.

Q: It was merely based on a small opening, isn't it?

A: Yes sir.

Q: Now Mr. Witness, this marijuana bricks (sic) is very close to your nose, isn't it?

A: Yes sir.

Q: And yet, you could not smell it, isn't it?

A: Yes sir.

Q: You could identify that what is inside this thing is marijuana because you could not smell it, isn't it?

A: During the time of –

Q: My question is answerable by yes or no Mr. Witness?

A: Yes sir.

Q:

Now Mr. Witness, you would agree with me that you allegedly smell marijuana at that time of the incident, you were around five (5) to ten (10) meters, isn't it?

A: No sir.

Q: How many meters are you away?

A: Very near sir.

x x x x

Q: Could you approximate how near is that Mr. Witness?

A: One inch from the gutter of the jeep sir.

Q:

One inch from the gutter of the jeep. [M]y question is not from the gutter of the vehicle, but your distance from the marijuana or from the object evidence Mr. Witness, I'm not asking about the gutter of the jeep. I'm asking about the distance from the object evidence Mr. Witness, how far are you?

A: Very near sir.

Q: How near is that near Mr. Witness, the distance, I'm asking about the distance?

A: About one (1) foot only sir.

Q: So, you would agree with me that one (1) foot is here?

A: Yes sir.

Q:

Now Mr. Witness, I'm holding a brick of marijuana that was identified by the Chemist, my question is can you smell the brick?

A: At present no sir.

Q: No, you could not smell it?

A: Yes sir, at present.

Q: But if you put it close to your nose, that would be the time that you would be able to smell it, isn't it?

A: Yes sir.

Q:

So Mr. Witness, you would agree with me that in spite of the fact that this brick of marijuana is now removed from the bag, you could not smell the brick of marijuana in spite of the fact that I position myself one (1) foot away from you, is that correct?

A: At present sir, I cannot smell.[8] (Emphasis supplied)

During redirect examination, the prosecution attempted to establish that PSI Soria could not smell the marijuana in the courtroom because "the situation x x x inside the [c]ourtroom x x x is airconditioned"[9] and that the marijuana was newly repacked.[10] However, PSI Soria's "theories" immediately lost credibility when he was subjected to re-cross examination as follows:

Q:

Now Mr. Witness, you also testified that there are two (2) reasons that's why you cannot smell marijuana in this Court room, isn't it?

A: Yes, sir.

Q: And one is because the place is enclosed, isn't it?

A: Yes, sir.

Q: And it has air con, isn't it?

A: Yes, sir.

Q: But you would agree with me that being a Police Officer, you finished science, isn't it?

A: Yes, sir.

Q:

And it is basic in science that when a field is an open field, it is basic that you cannot smell what is in open, isn't it? Because it's a very big place, isn't it?

A: Yes, sir.

Q:

And also basic in science is that, when it is an enclosed room, you will be able to smell what is inside that room, is it not? Because it is enclosed, isn't it?

A: This room is -

Q: My question again is answerable by yes or no?

A: Yes, sir.

x x x x

Q: Mr. Witness, you also testified that during that time the alleged marijuana was newly repacked, isn't it?

A: Yes, sir.

Q: Mr. Witness, were you present when the marijuana was repacked?

A: No, sir.

Q:

So you do not know for a fact that it was newly packed or it was packed mo[n]ths ago, weeks ago or years ago, isn't it?

A: But during that time sir -

Q: My question is answerable by yes or no again Mr. Witness?

A: Yes, sir.[11]

It is thus clear that in this particular case, neither of the officers had probable cause — as the plastic bag, by itself, is not sufficient, and the claim of having smelled the marijuana has been disproven — apart from the tip from the "concerned citizen." Despite this, the officers still conducted an extensive and intrusive search. The Court, however, has already held with unequivocal clarity that in situations involving warrantless searches and seizures, "law enforcers cannot act solely on the basis of confidential or tipped information. A tip is still hearsay no matter how reliable it may be. It is not sufficient to constitute probable cause in the absence of any other circumstance that will arouse suspicion." [12]

Just recently, the Court en banc once again upheld this principle in *People v. Sapla*, [13] in which it explained the rationale as follows:

It is not hard to imagine the horrid scenarios if the Court were to allow intrusive warrantless searches and seizures on the solitary basis of unverified, anonymous tips.

Any person can easily hide in a shroud of anonymity and simply send false and fabricated information to the police. Unscrupulous persons can effortlessly take advantage of this and easily harass and intimidate another

by simply giving false information to the police, allowing the latter to invasively search the vehicle or premises of such person on the sole basis of a bogus tip.

On the side of the authorities, unscrupulous law enforcement agents can easily justify the infiltration of a citizen's vehicle or residence, violating his or her right to privacy, by merely claiming that raw intelligence was received, even if there really was no such information received or if the information received was fabricated.

Simply stated, the citizen's sanctified and heavily-protected right against unreasonable search and seizure will be at the mercy of phony tips. The right against unreasonable searches and seizures will be rendered hollow and meaningless. The Court cannot sanction such erosion of the Bill of Rights.[14]

To reiterate, checkpoint searches are valid as warrantless searches only if they are conducted merely as visual searches. To justify an extensive search, therefore, there must be other facts establishing probable cause apart from the tip received by the officers. As the Court has extensively explained, still in *Veridiano*:

That the object of a warrantless search is allegedly inside a moving vehicle does not justify an extensive search absent probable cause. Moreover, law enforcers cannot act solely on the basis of confidential or tipped information. A tip is still hearsay no matter how reliable it may be. It is not sufficient to constitute probable cause in the absence of any other circumstance that will arouse suspicion.

Although this Court has upheld warrantless searches of moving vehicles based on tipped information, there have been other circumstances that justified warrantless searches conducted by the authorities.

In *People v. Breis*, apart from the tipped information they received, the law enforcement agents observed suspicious behavior on the part of the accused that gave them reasonable ground to believe that a crime was being committed. The accused attempted to alight from the bus after the law enforcers introduced themselves and inquired about the ownership of a box which the accused had in their possession. In their attempt to leave the bus, one (1) of the accused physically pushed a law enforcer out of the way. Immediately alighting from a bus that had just left the terminal and leaving one's belongings behind is unusual conduct.

In *People v. Mariacos*, a police officer received information that a bag containing illegal drugs was about to be transported on a passenger jeepney. The bag was marked with "O.K." On the basis of the tip, a police officer conducted surveillance operations on board a jeepney. Upon seeing the bag described to him, he peeked inside and smelled the distinct odor of marijuana emanating from the bag. The tipped information and the police officer's personal observations gave rise to probable cause that rendered the warrantless search valid.

The police officers in *People v. Ayangao* and *People v. Libnao* likewise received tipped information regarding the transport of illegal drugs. In *Libnao*, the police officers had probable cause to arrest the accused based on their three (3)-month long surveillance operation in the area where the accused was arrested. On the other hand, in *Ayangao*, the police officers noticed marijuana leaves protruding through a hole in one (1) of the sacks carried by the accused.[15] (Emphasis and underscoring supplied)

From the facts of this case, however, it is very clear that the "tip" was the only real basis of the police officers, as the other supposed facts that supposedly constituted probable cause were shown to be incredible. Indeed, "it is doctrinal that all doubts must be resolved in favor of the accused,"[16] including the doubtful facts in the present case.

Thus, as the search conducted by the police officers in this case was invalid, the seized items — despite their immense volume — must be set aside for being fruits of the poisonous tree.

The prosecution failed to
establish that Bateria had
intent to possess the

prohibited items

I do not dispute the statement in the ponencia that criminal intent need not be proved in the prosecution of acts mala prohibita. However, in acts mala prohibita, it is still required that the accused must have intended to commit the act that is, by the very nature of things, the crime itself. In the words of former Chief Justice Panganiban in *People v. Lacerna*,^[17] "[i]ntent to commit the crime is not necessary, but intent to perpetrate the act prohibited by the special law must be shown."^[18]

In other words, even if the offense of illegal possession of dangerous drugs is *malum prohibitum*, "[t]his, however, does not lessen the prosecution's burden because it is still required to show that the prohibited act was intentional."^[19] In cases involving the illegal possession of dangerous drugs, "the prosecution is not excused from proving that possession of the prohibited act was done 'freely and consciously,' which is an essential element of the crime."^[20]

Hence, a critical element of the crime of illegal possession of dangerous drugs is the element of intent to possess or *animus possidendi*.

The Court has held that in criminal cases involving prohibited drugs, there can be no conviction unless the prosecution shows that the accused knowingly, freely, intentionally, and consciously possessed the prohibited articles in his person, or that *animus possidendi* is shown to be present together with his possession or control of such article.^[21]

The concept of possession contemplated under RA 9165 goes beyond mere actual and physical possession of the drug specimen. Otherwise, any unsuspecting person who is victimized by the planting of evidence will be unjustly prosecuted based on the sheer fact that illegal drugs were found to be in his possession. To digress and to recall, the victims of "*Laglag Bala*" could not have been convicted if it is proven that the bullets found in their personal bags were not put there by them in the first place. It must be proven that the person in whose possession the drug specimen was found knew that they were possessing illegal drugs.

Therefore, to prosecute an accused for illegally possessing, or in this case, transporting, illegal drugs, the prosecution must go beyond and provide evidence that the accused knowingly, freely, consciously, and intentionally possessed the bag knowing it to contain illegal drugs.

Jurisprudence tells us that since knowledge refers to a mental state of awareness of a fact and, therefore, courts cannot penetrate the mind of an accused and thereafter state its perceptions with certainty, resort to other evidence is necessary.^[22] Hence, the intent to possess, being a state of mind, may be determined on a case-to-case basis by taking into consideration the prior or contemporaneous acts of the accused, as well as the surrounding circumstances. Its existence may and usually must be inferred from the attendant events in each particular case.^[23]

After an intensive review of the records of this case, I strongly believe that there is reasonable doubt as to whether the bags even belonged to Baterina. To me, the surrounding factual circumstances, as established by the evidence on record, fail to clearly establish that there was *animus possidendi* on the part of Baterina.

For instance, in acquitting Baterina's co-accused, the RTC stated:

In this case, the prosecution, other than its bare assertions that accused Baterina conspired with Pakoyan, Dayao and Puklis in transporting the five (5) bags of marijuana, failed to establish that there was indeed a conscious criminal design existing between them and accused Baterina to commit the said offense. True, accused Pakoyan, Dayao and Puklis were inside the jeep that fateful day of August 3, 2010, but it could not be deduced that they were aware of the contents of the five (5) plastic bags. These facts, standing alone, cannot

give rise to a presumption of conspiracy.

Certainly, conspiracy must be proven through clear and convincing evidence. Indeed, it is possible that accused Pakoyan, Dayao and Puklis were telling the truth when they said that they merely hired accused Bateria to bring their sick child to the hospital. In short, the Court finds that mere presence of accused Pakoyan, Dayao and Puklis inside the jeep as passengers were inadequate to prove that they were also conspirators of accused Bateria.[24] (Emphasis and underscoring supplied)

It is important to note that the ownership of the bags was never truly established. Prescinding from this uncertainty, the RTC treated as reasonable doubt the possibility that these people did not actually own, possess, or at least know the contents, of the bags.

The above reasoning of the RTC, however, could similarly be said about Bateria.

PO2 Olete, one of the witnesses for the prosecution, himself admitted that it was customary in the area to hire private vehicles as a mode of transportation. During the cross-examination, PO2 Olete testified as follows:

Q: How long have you been stationed in San Gabriel police station mister witness?

A: Three (3) years, sir.

Q: So, in that span of time you are aware of [the] topography of San Gabriel?

A: Yes, sir.

Q: And you are aware also that some parts of the Barangay are located in far flung areas?

A: Yes, sir.

Q:

And the mode of transportation in going to and from these barangays is only through motorized vehicles. Is that right mister witness?

A: Yes, sir.

Q:

So, you are also familiar with the arrangements in going to and from these places that it must be on a contract basis mister witness?

A: Yes, sir.

Q: That you have to hire a motor vehicle so that you can transport your things from these far flung areas?

A: During night only, sir.[25]

In addition, based on the defense evidence, Bateria and his wife both claimed that he was engaged in the business of driving, and even his three co-accused confirmed that they indeed hired him to transport them.

It is not far-fetched for a group of people — like Bateria's co-accused — to bring bags on their way to a hospital. In fact, it is even more contrary to human experience if they did not actually bring bags if they truly were on their way to the hospital. Moreover, common sense and human experience dictates that hired vehicles are normally emptied before the start of the journey because the space inside should be for the use of the lessees, not the lessor, during the time period.

Thus, Bateria's testimony that he was just hired as a driver by his three co-accused, that the bags were not his, and that he did not know the contents of the bags has a ring of truth to it. In fact, it is my view that as between Bateria and his three co-accused, the RTC should have acquitted Bateria whose testimony is more consistent with logic, common sense, and human experience. Parenthetically, if there was anyone that the RTC should have convicted, it should have been one or all of Bateria's co-accused, not him. After all, the prosecution witness who received the initial tip himself testified that the text message he received mentioned that "a group of men and women will transport [a] big volume of dried marijuana"[26] — a description that fits the group that hired Bateria.

In this connection, it is well-settled that "if the inculpatory facts and circumstances are capable of two or more interpretations, one of which being consistent with the innocence of the accused and the other or others consistent with his guilt, then the evidence in view of the constitutional presumption of innocence has not fulfilled the test of moral certainty and is thus insufficient to support a conviction." [27]

Given the foregoing, the same possibilities that became the grounds for reasonable doubt on the part of Bateria's co-accused likewise exists, if not more, for Bateria. To repeat, the ownership of the bags containing marijuana was never established — a burden that the prosecution failed to discharge. To my mind, this constitutes sufficient reasonable doubt on Bateria's guilt.

In sum, Bateria should be acquitted because the corpus delicti of the crime is inadmissible for being fruit of the poisonous tree. Even assuming, however, that the seized items were admissible, Bateria should still be acquitted in consonance with the constitutional presumption of innocence due to the failure of the prosecution to establish that he owned — or at least had the intent to possess — the bags containing the contraband.

I would like to end this Opinion with a quote from a 1995 case that remains to ring true until today: "[m]uch as we share the abhorrence of the disenchanted public in regard to the proliferation of drug pushers, this Court cannot permit the incarceration of an individual based on insufficient factual nexus of that person's participation in the commission of the offense." [28]

In view of the foregoing, I vote to GRANT the Petition. The accused-appellant Emiliano Bateria y Cabading should be ACQUITTED from the charge of violating Section 5, Republic Act No. 9165.

[1] Ponencia, p. 2.

[2] G.R. No. 200370, June 7, 2017, 826 SCRA 382.

[3] Id. at 409-410.

[4] G.R. No. 86218, September 18, 1992, 214 SCRA 63.

[5] Id. at 69.

[6] TSN dated October 7, 2010, pp. 8-9.

[7] TSN dated November 9, 2010, pp. 5-6.

- [8] TSN dated January 20, 2011, pp. 28-31.
- [9] TSN dated March 1, 2011, p. 4.
- [10] TSN dated March 1, 2011, p. 5.
- [11] TSN dated March 1, 2011, pp. 7-9.
- [12] Veridiano v. People, supra note 2 at 411. Emphasis and underscoring supplied.
- [13] G.R. No. 244045, June 16, 2020, accessed at .
- [14] Id.
- [15] Veridiano v. People, supra note 2 at 411-412.
- [16] People v. Delima, G.R. No. 222645, June 27, 2018, 869 SCRA 94, 110.
- [17] G.R. No. 109250, September 5, 1997, 278 SCRA 561.
- [18] Id. at 581.
- [19] Id.
- [20] Id.
- [21] People v. Peñaflorida, Jr., G.R. No. 175604, April 10, 2008, 551 SCRA 111, 126.
- [22] Id.
- [23] Id.
- [24] CA rollo, p. 76.
- [25] TSN dated November 9, 2010, pp. 6-7.
- [26] TSN dated January 20, 2011, p. 5.
- [27] Franco v. People, 780 Phil. 36 (2016).
- [28] People v. Melosantos, G.R. No. 115304, July 3, 1995, 245 SCRA 569, 587.

CONCURRING OPINION

LOPEZ, J.:

I register my concurrence with the ponencia which affirmed the conviction of the accused for the crime of illegal transportation of dangerous drugs. Specifically, I agree that there is probable cause to justify the warrantless search.

Notably, probable cause refers to facts and circumstances which would lead a reasonably discreet and prudent man to believe that an offense has been committed, and that objects sought in connection with the offense are in the place sought to be searched. It must be shown by the best evidence that could be obtained under the circumstances. It demands more than bare suspicion and requires less than evidence which would justify conviction. Indeed, probable cause exists if a practical, common-sense evaluation of the facts and circumstances show a fair possibility that contrabands will be found in the asserted location.[1]

Here, the facts established that the authorities received a text message from a concerned citizen that men and women on board a jeep will be transporting large volume of dried marijuana leaves. Immediately, the police officers set up a checkpoint. At 2:30 a.m. the following day, the authorities flagged down the accused's owner-type jeepney. Thereafter, one of the police officers smelled the distinctive odor of marijuana which prompted a thorough search and resulted in the confiscation of more than 48 kilograms of marijuana.

On that point, the police officers are left with no choice because letting a suspect pass without further investigation is a euphemism of allowing a crime to run. To hold that no criminal can, in any case, be arrested and searched for the evidence and tokens of his crime without a warrant, would be to leave society, to a large extent, at the mercy of the shrewdest, the most expert, and the most depraved of criminals, facilitating their escape in many instances.[2] On the other hand, the general allegation that the accused had been stopped and searched without a warrant at the checkpoint is insufficient to determine whether there was a violation of the right against unlawful search and seizure.[3] The inherent right of the state to protect its existence and promote public welfare should prevail over an individual's right against a warrantless search which is however reasonably conducted. Besides, warrantless searches and seizures at checkpoints are quite similar to searches and seizures accompanying warrantless arrests during the commission of a crime, or immediately thereafter.[4]

Finally, it must be emphasized that the police officers are duty bound to respond to any information involving illegal activities. Yet, the involution of intelligence materials obliges the authorities to be discerning and vigilant in scintillating truthful information from the false ones. Similarly, if the courts of justice are to be of understanding assistance to our law enforcement agencies, it is necessary to adopt a realistic appreciation of the physical and tactical problems, instead of critically viewing them from the placid and clinical environment of judicial chambers.[5]

FOR THESE REASONS, I vote to DENY the appeal.

[1] SPO4 Laud (Ret.) v. People, 747 Phil. 503, 521-522 (2014), citing Santos v. Pryce Gases, Inc., 563 Phil. 781 (2007).

[2] People v. Kagui Malasugui, 63 Phil. 221, 228 (1936), citing United States v. Snyder, 278 Fed. 650.

[3] Valmonte v. Gen. De Villa, 258 Phil. 838 (1989).

[4] Id.

[5] People v. Montilla, 349 Phil. 640 (1998). See also Dissenting Opinion in People v. Sapla, G.R. No. 244045, June 16, 2020.

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