

# FIRST DIVISION

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

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

## DECISION

**LAZARO-JAVIER, J.:**

### The Case

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

### Proceedings Before the Trial Court

#### The Charge

By Information<sup>[3]</sup> 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<sup>rd</sup> 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."<sup>[4]</sup> 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.<sup>[5]</sup> 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).<sup>[6]</sup> 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.<sup>[7]</sup>

Early morning of the following day, August 3, 2010, around 2:30, the team flagged down an owner-type jeepney driven by appellant Bateria.<sup>[8]</sup> Dayao, Pakoyan, Puklis, and a minor child were on board.<sup>[9]</sup> PSI Soria walked to the back of the jeepney which emitted the peculiar odor of marijuana.<sup>[10]</sup> He looked inside and saw a slightly opened bag containing marijuana bricks wrapped with a yellow tape.<sup>[11]</sup> 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;<sup>[12]</sup> one (1) black bag marked "B" containing two (2) bricks of marijuana, respectively marked MOO and RTA B-1 to B-2;<sup>[13]</sup> one (1) yellow bag marked "C" containing eight (8) bricks of marijuana, respectively marked as MOO and RTA C-1 to C-8;<sup>[14]</sup> one (1) red bag marked "D" containing five (5) bricks of marijuana, respectively marked as MOO and RTA D-1 to D-5;<sup>[15]</sup> and one (1) blue bag marked "E" containing four (4) bricks of marijuana, respectively marked as MOO and RTA E-1 to E-4.<sup>[16]</sup>

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<sup>[17]</sup> and prepared the Request for Laboratory Examination.<sup>[18]</sup>

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.<sup>[19]</sup>

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.<sup>[20]</sup>

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

## The Defense's Version

Appellant testified that in the evening of August 2, 2010,<sup>[29]</sup> he received a text message from his co-accused Melina Puklis<sup>[30]</sup> asking his help to bring her child to a hospital in Balballayang, San Gabriel, La Union.<sup>[31]</sup> 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.<sup>[32]</sup> 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.<sup>[33]</sup> When the police officers opened the bags, he was surprised that it contained marijuana bricks.<sup>[34]</sup> 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.<sup>[35]</sup>

## The Trial Court's Ruling

By Decision<sup>[36]</sup> 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.**<sup>[37]</sup>

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.<sup>[38]</sup> The very act of transporting illegal drugs is *malum prohibitum* where intent or knowledge of what is being transported is not necessary.<sup>[39]</sup> 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.<sup>[40]</sup>

### **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;<sup>[41]</sup> the police officers had no probable cause to search his vehicle.<sup>[42]</sup> 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.<sup>[43]</sup>

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;<sup>[44]</sup> 2) appellant was caught *in flagrante delicto*<sup>[45]</sup> 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;<sup>[46]</sup> and 4) the integrity and evidentiary value of the seized items negated appellant's argument that there was breach in the chain of custody.<sup>[47]</sup>

### **The Court of Appeals' Ruling**

By Decision<sup>[48]</sup> 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.<sup>[49]</sup> 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.<sup>[50]</sup> The search was valid and so was appellant's arrest.<sup>[51]</sup> Besides, it was too late in the day to raise the issue against the legality of his arrest.<sup>[52]</sup> Finally, the chain of custody was likewise shown to have not been breached.<sup>[53]</sup>

### **The Present Appeal**

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

In compliance with Resolution<sup>[54]</sup> 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.<sup>[55]</sup>

On September 10, 2018, appellant filed his supplemental brief reiterating that since his arrest was unlawful, the ensuing warrantless search and seizure were illegal.<sup>[56]</sup> 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.<sup>[57]</sup> 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.<sup>[58]</sup>

In ***People v. Asislo***,<sup>[59]</sup> 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.<sup>[60]</sup> The fact that there is actual conveyance suffices to support a finding that the act of transporting was committed.<sup>[61]</sup>

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.<sup>[62]</sup>

In ***People v. Asislo***,<sup>[63]</sup> 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***,<sup>[64]</sup> 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