

FIRST DIVISION

[G.R. No. 227038, July 31, 2017]

JEFFREY MIGUEL Y REMEGIO, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

D E C I S I O N

PERLAS-BERNABE, J.:

Assailed in this petition for review on *certiorari*^[1] are the Decision^[2] dated October 21, 2015 and the Resolution^[3] dated September 5, 2016 of the Court of Appeals (CA) in CA-G.R. CR No. 35318, which affirmed the Decision^[4] dated October 1, 2012 of the Regional Trial Court of Makati City, Branch 64 (RTC) in Criminal Case No. 10-912 convicting petitioner Jeffrey Miguel y Remegio (petitioner) of the crime of illegal possession of dangerous drugs.

The Facts

On May 27, 2010, an Information^[5] was filed before the RTC charging petitioner of illegal possession of dangerous drugs, defined and penalized under Section 11, Article II of Republic Act No. (RA) 9165,^[6] otherwise known as the "Comprehensive Dangerous Drugs Act of 2002," the accusatory portion of which reads:

On the 24th day of May 2010, in the city of Makati, the Philippines, accused, not being lawfully authorized to possess any dangerous drug and without the corresponding license or prescription, did then and there willfully, unlawfully and feloniously have in his possession, control, and custody a total of one point ten (1.10) grams of dried Marijuana leaves, a dangerous drug.

CONTRARY TO LAW.^[7]

The prosecution alleged that at around 12:45 in the morning of May 24, 2010, a *Bantay Bayan* operative of Barangay San Antonio Village, Makati City named Reynaldo Bahoyo (BB Bahoyo) was doing his rounds when he purportedly received a report of a man showing off his private parts at Kaong Street. BB Bahoyo and fellow *Bantay Bayan* operative Mark Anthony Velasquez (BB Velasquez) then went to the said street and saw a visibly intoxicated person, which they later identified as herein petitioner, urinating and displaying his private parts while standing in front of a gate enclosing an empty lot. BB Bahoyo and BB Velasquez approached petitioner and asked him where he lived, and the latter answered Kaong Street. BB Bahoyo then said that he also lived in the same street but petitioner looked unfamiliar to him, so he asked for an identification card, but petitioner failed to produce one. BB Velasquez then repeated the request for an identification card, but instead, petitioner emptied his pockets, revealing a pack of cigarettes containing one (1)

stick of cigarette and two (2) pieces of rolled paper containing dried marijuana leaves, among others. This prompted BB Bahoyo and BB Velasquez to seize the foregoing items, take petitioner to the police station, and turn him, as well as the seized items, over to SPO3 Rafael Castillo (SPO3 Castillo). SPO3 Castillo then inventoried, marked, and photographed the seized items, all in the presence of BB Bahoyo and BB Velasquez, and thereafter, prepared an inventory report and a request for qualitative examination of the seized two (2) pieces of rolled paper and for petitioner to undergo drug testing. After examination, it was confirmed that the aforesaid rolled paper contained marijuana and that petitioner was positive for the presence of methamphetamine but negative for THC-metabolites, both dangerous drugs.^[8]

Petitioner pleaded not guilty to the charge, and thereafter, presented a different version of the facts. According to him, he was just urinating in front of his workplace when two (2) *Bantay Bayan* operatives, *i.e.*, BB Bahoyo and BB Velasquez, approached and asked him where he lived. Upon responding that he lived in Kaong Street, BB Bahoyo and BB Velasquez then frisked him, took away his belongings, and thereafter, handcuffed and brought him to the barangay hall. He was then detained for about an hour before being taken to the Ospital ng Makati and to another office where a bald police officer questioned him. Thereafter, he was taken back to the barangay hall where they showed him two (2) sticks of marijuana joints allegedly recovered from him.^[9]

The RTC Ruling

In a Decision^[10] dated October 1, 2012, the RTC found petitioner guilty beyond reasonable doubt of the crime charged and, accordingly, sentenced him to suffer the penalty of imprisonment for an indeterminate period of twelve (12) years and one (1) day, as minimum, to fourteen (14) years and eight (8) months, as maximum, and to pay a fine in the amount of P300,000.00, without subsidiary imprisonment in case of insolvency.^[11]

The RTC found that BB Bahoyo and BB Velasquez conducted a valid warrantless arrest, as petitioner was scandalously showing his private parts at the time of his arrest. Therefore, the resultant search incidental to such arrest which yielded the seized marijuana in petitioner's possession was also lawful. In this regard, since the prosecution has adequately shown that petitioner freely and consciously possessed such marijuana without authority by law, then he must be convicted for violating Section 11, Article II of RA 9165.^[12]

Aggrieved, petitioner appealed^[13] to the CA.

The CA Ruling

In a Decision^[14] dated October 21, 2015, the CA affirmed petitioner's conviction.^[15] It held that the search made on petitioner which yielded the seized marijuana was validly made as it was done incidental to his arrest for exhibiting his private parts on public. As such, the said seized marijuana is admissible in evidence and, thus, sufficient to convict him for the crime charged.^[16] The CA likewise held that the rule on chain of custody was duly complied with and, thus, the integrity and

evidentiary value of the seized drugs were not compromised.^[17]

Undaunted, petitioner moved for reconsideration,^[18] which was, however, denied in a Resolution^[19] dated September 5, 2016; hence, this petition.

The Issue Before the Court

The issue for the Court's resolution is whether or not the CA correctly upheld petitioner's conviction for illegal possession of dangerous drugs.

The Court's Ruling

The petition is meritorious.

In criminal cases, "an appeal throws the entire case wide open for review and the reviewing tribunal can correct errors, though unassigned in the appealed judgment, or even reverse the trial court's decision based on grounds other than those that the parties raised as errors. The appeal confers the appellate court full jurisdiction over the case and renders such court competent to examine records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law."^[20]

Proceeding from the foregoing, and as will be explained hereunder, petitioner's conviction must be set aside.

One of the arguments presented in the instant petition is that the search and arrest made on petitioner were illegal and, thus, the marijuana purportedly seized from him is inadmissible in evidence.^[21] In this relation, it is worth noting that his arresting officers, *i.e.*, BB Bahoyo and BB Velasquez, are mere *Bantay Bayan* operatives of Makati City. Strictly speaking, they are not government agents like the Philippine National Police (PNP) or the National Bureau of Investigation in charge of law enforcement; but rather, they are **civilian volunteers** who act as "force multipliers" to assist the aforesaid law enforcement agencies in maintaining peace and security within their designated areas.^[22] Particularly, jurisprudence described the nature of *Bantay Bayan* as "a group of male residents living in [the] area organized for the purpose of keeping peace in their community[, which is] an accredited auxiliary of the x x x PNP."^[23] In the case of *Dela Cruz v. People*^[24] involving civilian port personnel conducting security checks, the Court thoroughly discussed that while the Bill of Rights under Article III of the 1987 Constitution generally cannot be invoked against the acts of private individuals, the same may nevertheless be applicable if such individuals **act under the color of a state-related function**, *viz.*:

With regard to searches and seizures, **the standard imposed on private persons is different from that imposed on state agents or authorized government authorities.**

In *People v. Marti*, the private forwarding and shipping company, following standard operating procedure, opened packages sent by accused Andre Marti for shipment to Zurich, Switzerland and detected a peculiar odor from the packages. The representative from the company

found dried marijuana leaves in the packages. He reported the matter to the National Bureau of Investigation and brought the samples to the Narcotics Section of the Bureau for laboratory examination. Agents from the National Bureau of Investigation subsequently took custody of the illegal drugs. Andre Marti was charged with and was found guilty of violating Republic Act No. 6425, otherwise known as the Dangerous Drugs Act.

This court held that there was no unreasonable search or seizure. The evidence obtained against the accused was not procured by the state acting through its police officers or authorized government agencies. **The Bill of Rights does not govern relationships between individuals; it cannot be invoked against the acts of private individuals:**

If the search is made upon the request of law enforcers, a warrant must generally be first secured if it is to pass the test of constitutionality. However, if the search is made at the behest or initiative of the proprietor of a private establishment for its own and private purposes, as in the case at bar, and without the intervention of police authorities, the right against unreasonable search and seizure cannot be invoked for only the act of private individual, not the law enforcers, is involved.

In sum, the protection against unreasonable searches and seizures cannot be extended to acts committed by private individuals so as to bring it within the ambit of alleged unlawful intrusion by the government.

x x x x

The Cebu Port Authority is clothed with authority by the state to oversee the security of persons and vehicles within its ports. **While there is a distinction between port personnel and port police officers in this case, considering that port personnel are not necessarily law enforcers, both should be considered agents of government under Article III of the Constitution. The actions of port personnel during routine security checks at ports have the color of a state-related function.**

In *People v. Malngan*, barangay tanod and the Barangay Chairman were deemed as law enforcement officers for purposes of applying Article III of the Constitution. **In *People v. Lauga*, this court held that a "bantay bayan," in relation to the authority to conduct a custodial investigation under Article III, Section 12 of the Constitution, "has the color of a state-related function and objective insofar as the entitlement of a suspect to his constitutional rights[.]"**

Thus, **with port security personnel's functions having the color of state-related functions and deemed agents of government, Marti is inapplicable in the present case.** x x x.^[25] (Emphases and underscoring supplied)

In this light, the Court is convinced that the acts of the *Bantay Bayan* or any barangay-based or other volunteer organizations in the nature of watch groups - relating to the preservation of peace and order in their respective areas have the color of a state-related function. As such, they should be deemed as law enforcement authorities for the purpose of applying the Bill of Rights under Article III of the 1987 Constitution to them.^[26]

Having established that the Bill of Rights may be applied to the *Bantay Bayan* operatives who arrested and subsequently searched petitioner, the Court shall now determine whether such arrest and search were validly made.

Section 2,^[27] Article III of the 1987 Constitution mandates that **a search and seizure must be carried out through or on the strength of a judicial warrant predicated upon the existence of probable cause, absent which, such search and seizure becomes "unreasonable" within the meaning of said constitutional provision.** To protect the people from unreasonable searches and seizures, Section 3 (2),^[28] Article III of the 1987 Constitution provides that **evidence obtained from unreasonable searches and seizures shall be inadmissible in evidence for any purpose in any proceeding.** In other words, evidence obtained and confiscated on the occasion of such unreasonable searches and seizures are deemed tainted and should be excluded for being the proverbial fruit of a poisonous tree.^[29]

One of the recognized exceptions to the need [of] a warrant before a search may be [e]ffected is a search incidental to a lawful arrest. **In this instance, the law requires that there first be a lawful arrest before a search can be made - the process cannot be reversed.**^[30]

A lawful arrest may be effected with or without a warrant. With respect to the latter, the parameters of Section 5, Rule 113 of the Revised Rules of Criminal Procedure should as a general rule be complied with:

Section 5. *Arrest without warrant; when lawful.* - A peace officer or a private person may, without a warrant arrest a person:

(a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense;

(b) When an offense has just been committed and he has probable cause to believe based on personal knowledge of facts or circumstances that the person to be arrested has committed it; and

(c) When the person to be arrested is a prisoner who has escaped from a penal establishment or place where he is serving final judgment or is temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another.

In cases falling under paragraphs (a) and (b) above, the person arrested without a warrant shall be forthwith delivered to the nearest police station or jail and shall be proceeded against in accordance with Section 7 of Rule 112.