

## SECOND DIVISION

[ G.R. NO. 171578, August 08, 2007 ]

**HERMINIO BUENAVENTURA Y RECTO, APPELLANT, VS. PEOPLE  
OF THE PHILIPPINES, APPELLEE.**

### DECISION

**CARPIO MORALES, J.:**

Appellant, Herminio Buenaventura y Recto, was in two Informations charged before the Regional Trial Court (RTC) of Mandaluyong for violation of Republic Act No. 6425 (R.A. 6425), otherwise known as the Dangerous Drugs Act, docketed as Criminal Case Nos. MC02-5167-D-H and MC02-5168-D-H, for selling and possession, respectively.

The accusatory portion of the first Information reads:

That on or about the 13<sup>th</sup> day of April 2002, in the City of Mandaluyong, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, without any lawful authority, did then and there willfully, unlawfully and feloniously sell, deliver or distribute to P/INSP. Roberto Palisoc, Jr. a poseur buyer, in the amount of P2,400.00 with serial nos. LR094904, TNT215767, D257728,Y57603, BL472852, YB026795, BG593266 and YC83780 one (1) brick of marijuana fruiting tops with 879, 488 grams, which were found positive to the test for marijuana, a prohibited drug, without the corresponding authority, license and prescription, in violation of the above-cited law.<sup>[1]</sup>  
(Underscoring supplied)

That of the second Information reads:

That on or about the 13<sup>th</sup> day of April, 2002, in the City of Mandaluyong, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, not having been lawfully authorized to possess or otherwise use any prohibited drug, did then and there willfully, unlawfully and feloniously and knowingly have in his possession and under his custody and control nine (9) bricks of marijuana fruiting tops to wit:

- |                  |                 |
|------------------|-----------------|
| 1. 915.748 grams | 6.897.190 grams |
| 2. 771.174 grams | 7.893.382 grams |
| 3. 911.105 grams | 8.846.262 grams |
| 4. 914.801 grams | 9.809.622 grams |
| 5. 918.844 grams |                 |

all in the total grams of 7,877.858 grams, which were found positive to the test for marijuana, a prohibited drug, without the corresponding

authority, license and prescription, in violation of the above-cited law.<sup>[2]</sup>  
(Underscoring supplied)

From the evidence for the prosecution, the following facts were established:

Following their receipt of a report from an informant that a certain "Demet," who is a resident of Mandaluyong City, was selling marijuana in the Malate area, SPO2 Charlie Manzano (SPO2 Manzano) and PO1 Christopher Rivera (PO1 Rivera), upon the instruction of Police Inspector Roberto Palisoc (P/Insp. Palisoc), Chief of the Station Drug Enforcement Unit of the Malate Police, conducted on April 7, 2002 a surveillance in the Malate area to verify the report of the informant.

On April 11, 2002, SPO2 Manzano and PO1 Rivera reported to P/Insp. Palisoc that "Demet," whose real name is Herminio Buenaventura and a resident of 270 Daang Bakal St., Mandaluyong City, was indeed selling marijuana.

A buy-bust operation was thus scheduled on April 13, 2002. Two teams which were organized for the purpose prepared marked money in the total amount of P2,400 representing the cost of one brick of marijuana. The money consisted of four P500 bills and four P100 bills, each of which was marked with "RP" on the left portion thereof.

The teams proceeded to the Mandaluyong Police Station to coordinate with the local police, after which they repaired to their target location at Daang Bakal St.

P/Insp. Palisoc, together with the informant, went to the house at 270 Daang Bakal St. The other team members took strategic positions in the vicinity.

On seeing appellant in front of the house, P/Insp. Palisoc and the informant approached him. The informant then introduced appellant to P/Insp. Palisoc as the person interested to buy the "stuff."

On appellant's invitation, P/Insp. Palisoc and the informant went inside the house where appellant asked for the payment.

P/Insp. Palisoc thus gave the marked P2,400 to appellant who then took out one brick of marijuana from a black traveling bag which he gave to P/Insp. Palisoc, asking the latter to sniff it.

Convinced by its smell and texture that the brick was marijuana, P/Insp. Palisoc placed one hand inside his pocket and beeped his cellular phone which served as his pre-arranged signal to the other members of the teams.

P/Insp. Palisoc thereafter introduced himself as a police officer and arrested appellant. The other members of the teams repaired to appellant's house, introduced themselves as police officers, and searched the premises where they recovered the black traveling bag which contained nine (9) bricks of marijuana.

After apprising appellant of his constitutional rights, the policemen searched his person from whom they recovered the marked P2,400.

The marijuana bricks were subjected to laboratory examination by Forensic Chemist Judyce A. Macapagal, the result of which is reflected in her report as follows:

**SPECIMEN SUBMITTED:**

One (1) black travel bag with markings "PS-9 HRB April 13, 2002" containing ten (10) bricks of suspected Marijuana fruiting tops with the following markings and recorded net weights:

A (HB-BB) - 879.488 grams	F (HB 5) - 918.844 grams
B (HB 1) - 915.478 grams	G (HB 6) - 897.190 grams
C (HB 2) - 771.174 grams	H (HB 7) - 893.382 grams
D (HB 3) - 911.105 grams	I (HB 8) - 846.262 grams
E (HB 4) - 914.801 grams	J (HB 9) - 809.622 grams

TOTAL NET WEIGHT = 8,757.346 grams

**PURPOSE OF LABORATORY EXAMINATION:**

To determine the presence of prohibited or regulated drug. x x x

**FINDINGS:**

Qualitative examination conducted on the above-stated specimen gave POSITIVE results to the tests for Marijuana, a prohibited drug. x x x

**CONCLUSION:**

Specimen A through J contain Marijuana, a prohibited drug. x x x<sup>[3]</sup>  
(Underscoring supplied)

Upon the other hand, the defense proffered the following version:

On April 13, 2002, while one Rogelio delos Santos (Delos Santos) and barangay kagawad Edgar Ignacio (Ignacio) were conversing by the roadside of Daang Bakal St., they noticed a van and a sedan parked along the road. Two men alighted from the van and approached them, asking them if they know a Demet Buenaventura. Answering in the affirmative, Ignacio pointed to appellant who happened to be walking along the street on his way to the barangay hall. The two men from the van thereafter approached appellant and asked him if he was Demet Buenaventura to which he answered in the affirmative. Appellant was at once handcuffed and brought inside the van.

While inside the van, appellant asked the policemen inside why he was being arrested. One of them answered that someone pointed to him as an owner of marijuana, which appellant denied, he telling them that they could go to his house to prove that he had none. The policemen thus repaired to his house.

Upon reaching appellant's house, the policemen knocked at the door but nobody answered, prompting one of the policemen to kick the door open after which all of them went inside. Three of the policemen went upstairs, but after five to seven minutes, they went down empty-handed.

The policemen all left appellant's house and returned to the van. Soon after they went inside the van, two men arrived carrying a black bag which they placed on the front seat. One of the men in the van then pointed to appellant as the owner of the bag, which appellant denied.

Appellant was then blindfolded and his cellular phone, wallet and belt were taken from him. Afterwards, they all went to Precinct 9 of WPD Manila where he was detained.

By Decision<sup>[4]</sup> of June 10, 2004, Branch 209 of the RTC of Mandaluyong City found appellant guilty of both charges, it holding that as between the straightforward and positive testimonies of the prosecution witnesses and the bare and negative testimony of appellant, the former indubitably deserve greater weight and credence.

Before the Court of Appeals to which appellant assailed the trial court's decision, he raised the following issues:

- I. WHETHER OR NOT THE COURT A QUO ERRED IN CONVICTING ACCUSED-APPELLANT;
- II. WHETHER OR NOT THE POLICE OFFICERS STATIONED IN MALATE HAS JURISDICTION TO ARREST ACCUSED APPELLANT IN MANDALUYONG WITHOUT WARRANT OF ARREST.
- III. WHETHER OR NOT THE ARREST OF ACCUSED-APPELLANT CONDUCTED WITHOUT WARRANT OF ARREST IS VALID.<sup>[5]</sup>  
(Underscoring supplied)

By Decision<sup>[6]</sup> of November 22, 2005, the appellate court affirmed that of the trial court in this wise:

A perusal of the records show that appellant failed to move for the quashal of the information filed against him. Instead, he submitted himself before the Court, assisted by counsel, entered a plea of not guilty, gave his testimony in open court and presented the testimonies of other witnesses to corroborate his version of what happened. Appellant cannot, therefore be permitted to raise such issue before this Court as there was a clear waiver of his objection to the validity of his arrest.

The arrest made on appellant is valid notwithstanding the absence of a warrant of arrest. Appellant was apprehended pursuant to a legitimate buy-bust operation based on the information given by the informant to the Malate Police.

x x x x

Appellant was convicted of violating Section 4, RA 6425, as amended, for the sale of marijuana. Jurisprudence has firmly entrenched the following elements in the crime of illegal sale of prohibited drugs: (1) the accused (appellant) sold and delivered a prohibited drug to another, and (2) he knew that what he had sold and delivered was a dangerous drug. These essential elements have been established in the present case. Appellant

sold and delivered the marijuana to P/Insp. Palisoc posing as buyer. It was seized and identified as a prohibited drug and subsequently presented as evidence. Appellant was aware that he was selling and delivering marijuana as he in fact asked P/Insp. Palisoc to sniff it upon handling the same.

x x x x

The witnesses for the prosecution are law enforcement officers who, unless shown that they were inspired by an improper motive or were not properly performing their duty, have in their favor the legal presumption that official duty has been regularly performed. x x x

No ill motive in charging appellants of the offense, on the part of the police officers has been established. The accused (appellant) even testified that it was the first time that he met the police officers and he was unaware of any reason as to why these police officers who arrested him would fabricate charges against him. Likewise, appellant has not filed and has no intention of filing any criminal or administrative case against the police officers.

x x x x

Appellant was likewise charged of violation of Section 8 of RA 6425, as amended or illegal possession of prohibited drugs. In support of the charge, the prosecution presented as evidence the confiscated drugs obtained after the warrantless arrest of appellant.

x x x x

Having caught appellant in flagrante delicto as a result of the buy bust operation, the police officers were not only authorized but were also under obligation to apprehend the drug pusher. Since the arrest is lawful, the search made incidental to the arrest is valid.<sup>[7]</sup> (Underscoring supplied)

Before this Court, appellant faults the appellate court in:

I. . . . NOT CONSIDERING THE LEGAL ISSUE SHOWN UNDER SECTION 21, ARTICLE II OF R.A. NO. 9165, THAT IS, THE APPREHENDING POLICE OFFICERS DID NOT MAKE THE PHYSICAL INVENTORY AND PHOTOGRAPH THE SAME IN THE PRESENCE OF THE ACCUSED OR ANY 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 THE COPY THEREOF [sic];

II. . . . AFFIRMING THE DECISION OF THE HONORABLE REGIONAL TRIAL COURT WHERE THE POLICE ARRESTED THE ACCUSED-PETITIONER OUTSIDE ITS TERRITORIAL JURISDICTION AND WITHOUT PROPER COORDINATION WITH PDEA DESPITE CLEAR