

## **SPECIAL TWENTIETH DIVISION**

**[ CA-G.R. CEB CR. NO. 01793, July 18, 2014 ]**

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
ALFRED M. MARGAJA, ACCUSED-APPELLANT.**

### **D E C I S I O N**

**QUIJANO-PADILLA, J.:**

This is an appeal from the Decision<sup>[1]</sup> dated September 21, 2011 of the Regional Trial Court, 7<sup>th</sup> Judicial Region, Branch 8, Cebu City, convicting accused-appellant Alfred M. Margaja for violation of Secion 11, Article II, of RA 9165 or the Comprehensive Dangerous Drugs Act of 2002, docketed as Crim. Case No. CBU-89041.

#### ***The Facts***

On May 29, 2010, accused-appellant Alfred Marson Margaja [Margaja] was charged in an Information<sup>[2]</sup> for violation of Section 11, Article II, of RA 9165, the accusatory portion thereof, reads:

“That on or about the 28<sup>th</sup> day of May, 2010, at about 2:50 a.m., in the City of Cebu, Philippines and within the jurisdiction of this Honorable Court the above-named accused, with deliberate intent, did then and there have in his possession and under his control one (1) partially consumed white handrolled cigarette containing 0.07 gram burned dried *marijuana* fruiting taps or indian hemp, which after laboratory examination conducted gave positive result to the tests for the presence of *marijuana*, a dangerous drug.

CONTRARY TO LAW.”

An Information for the same offense was filed against Jerome B. Gonzaga [Gonzaga].<sup>[3]</sup> The RTC acquitted Gonzaga based on reasonable doubt.<sup>[4]</sup>

During Margaja's arraignment on July 8, 2010, with the assistance of his counsel, he pleaded not guilty to the offense charged.

During pre-trial<sup>[5]</sup> on August 10, 2010, the parties stipulated on the identities of the accused-appellant Alfred and Jerome, the existence and authenticity of Chemistry Report No. D-444-2010 prepared by Police Inspector Ryan Ace Sala and that the latter has no personal knowledge from whom and in what manner the arresting officers obtained the subject specimen evidence as well as the request for laboratory examination.

Thereafter, trial on the merits ensued.

#### VERSION OF THE PROSECUTION

The prosecution presented the three [3] arresting officers namely: PO3 Celso Sarona, PO2 Ramon Balongaita and PO2 Carlo Magno Jimenez, Jr., who testified to the following:

On May 28, 2010 at around 2:50 in the morning, SPO2 Rolando Manalili, the desk officer of PNP Police Station 11, Cebu City received a telephone call informing him that there were two [2] armed men at C. Padilla Street, Cebu City. Acting on that information, PO3 Celso Sarona [PO2 Sarona], PO2 Ramon Bolongaita [PO2 Bolongaita] and PO2 Carlo Magno Jimenez [PO2 Jimenez] went to the said area.<sup>[6]</sup>

Upon arriving at the area, true to the report, the police officers saw two [2] persons standing near Caltex gasoline station. The said persons were visible due to the illumination coming from the VECO lamppost nearby. When the police officers were in close proximity to the two [2] persons, who were later identified as herein accused-appellant Margaja and Gonzales, they saw the handle of hand guns protruding from their waists. Thus, the police officers immediately placed them under arrest<sup>[7]</sup> and confiscated the firearms from both accused.<sup>[8]</sup>

After both accused were placed under arrest, the police officers as a standard operating procedure, conducted a body search on them, PO2 Jimenez conducted the body search on accused-appellant Margaja while PO2 Sarona frisked accused Gonzaga. The police officers recovered one half consumed *marijuana* from each of the accused.<sup>[9]</sup> They immediately marked the same, the *marijuana* recovered from Margaja as "A-M-M-5-28-10"<sup>[10]</sup> while the *marijuana* recovered from Gonzales was marked as "J-G-B-05-28-10".<sup>[11]</sup> Thereafter, they took photographs of the contraband and made an inventory.<sup>[12]</sup>

At the police station, PO2 Jimenez prepared the laboratory request<sup>[13]</sup> and together with PO3 Sarona delivered the same at the PNP Crime Lab.<sup>[14]</sup> The laboratory request was received by one PO1 Asoy at 8:00 o'clock in the morning. Thereafter, PO1 Asoy transmitted the request at the PNP Chemistry Branch and was received by Police Senior Inspector Ryan Ace Mabilen Sala [PSI Sala].<sup>[15]</sup> After receiving the request, PSI Sala conducted chemical examination of the specimen and in his Chemistry Report No. D-444-2010<sup>[16]</sup>, it yielded positive result of *marijuana* weighing 0.07 gram.

Thereafter, prosecution formally offered Exhibits "A"- to "H"<sup>[17]</sup> with all their sub-markings which were all duly admitted by the RTC.

#### VERSION OF THE DEFENSE

The defense presented accused-appellant Margaja and Gonzaga,<sup>[18]</sup> who recounted that:

On May 28, 2010 at around 2:50 in the morning, Margaja was sitting at a store

outside Alaska, Mambaling, Cebu City. While there, he saw the police officers who disembarked from their vehicle and pointed their firearms at him while informing him that there was a robbery alarm. He was then brought to the police station. While there, the police officers let the complainant identify him. Even if the complainant said that he was not the culprit, the police officers who wanted to detain him, planted evidence on him which paved a way for the filing of case against him. He denied knowing his co-accused Gonzaga.<sup>[19]</sup>

Gonzaga, on the other hand, claimed that on the said date and time, he was having his coffee at a nearby place when a vehicle blocked his pathway. The police officers in their civilian clothing alighted from the vehicle and told him that he is one of the suspects of a robbery incident and asked him to go with them at the police station. When they reached the station the victims of the robbery were asked to identify him, but the said victims said that he was not the one. He further claimed that he only knew Margaja at the police station when they were detained at the same prison cell. Banking on his innocence, he was convinced that the charge against him was fabricated.<sup>[20]</sup>

The RTC on September 21, 2011, rendered a decision, convicting accused-appellant Margaja and acquitting Gonzaga based on reasonable doubt. The dispositive portion of the decision, provides:

“WHEREFORE, finding the accused, ALFRED M. MARGAJA for CRIM. CASE NO. CBU-89041 guilty beyond reasonable doubt of unlawfully possessing 0.07 gram of Marijuana, a dangerous drug, in violation of Section 11, Article II of Republic Act 9165, he is hereby sentenced to suffer the penalty of imprisonment for a period of TWELVE (12) YEARS AND ONE (1) DAY as minimum to FIFTEEN (15) YEARS, as maximum, and to pay a FINE in the amount of P300,000.00.

However, this Court finds the evidence against accused JEROME B. GONZAGA for CRIM. CASE NO. CBU-89044 insufficient, hence, he is hereby ordered ACQUITTED of (the) offense of which he is presently charged.

The Jail Warden of the Cebu City Jail is ordered to release accused JEROME B. GONZAGA from detention unless he is being detained for any other lawful cause, and to submit a report of compliance herewith within ten (10) days from notice of this Decision.

The subject Marijuana cigarettes with markings “A-M-M-5-28-10” and “G-G-B-5-28-10” (Exhibits “A-Margaja” and “A-Gonzaga,” respectively) are declared forfeited in favor of the Government, to be disposed of pursuant to the provisions of R.A. 9165 and related rules and regulations.

SO ORDERED.”<sup>[21]</sup>

On appeal, accused-appellant raised the lone assignment of error, which reads:

“THE TRIAL COURT ERRED IN PRONOUNCING THE GUILT OF THE ACCUSED DESPITE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.”<sup>[22]</sup>

## ***Our Ruling***

Accused-appellant hinges his appeal on PO3 Saron and SPO1 Jimenez's failure to follow the procedure for the custody and disposition of the *marijuana*, outlined in Section 21 of Republic Act No. 9165, after these were seized and confiscated.<sup>[23]</sup> Margaja points out that there was no showing that the arresting officers marked, inventoried and photographed the evidence recovered in his presence and that of Gonzaga's presence.<sup>[24]</sup> Consequently, the chain of custody was not duly established.

Accordingly, the trial court even noticed the said discrepancy leading to the acquittal of Gonzaga. While it is true that no evidence was shown that the policemen were motivated to make up a story or falsely implicate him, it does not warrant an inference that their statements are gospel truth and to be received hook, line and sinker. The presumption of regularity in the performance of official duty cannot by itself overcome the presumption of innocence nor constitute proof beyond reasonable doubt.<sup>[25]</sup> It should be pointed out also that there was no valid arrest on his person, warranting a reversal of the decision of the RTC.

The conviction of Margaja stands.

We must determine if the search was lawful. If it was, then there would have been probable cause for the warrantless arrest of Margaja.<sup>[26]</sup>

Article III, Section 2 of the Philippine Constitution provides:

"Section 2. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized."

Law and jurisprudence have laid down the instances when a warrantless search is valid. These are:

"1. Warrantless search incidental to a lawful arrest recognized under Section 12 [now Section 13], Rule 126 of the Rules of Court and by prevailing jurisprudence;

2. Seizure of evidence in "plain view," the elements of which are:

(a) a prior valid intrusion based on the valid warrantless arrest in which the police are legally present in the pursuit of their official duties;

(b) the evidence was inadvertently discovered by the police who had the right to be where they are;

(c) the evidence must be immediately apparent[;] and;

(d) "plain view" justified mere seizure of evidence without further search.

3. Search of a moving vehicle. Highly regulated by the government, the vehicle's inherent mobility reduces expectation of privacy especially when its transit in public thoroughfares furnishes a highly reasonable suspicion amounting to probable cause that the occupant committed a criminal activity;

4. Consented warrantless search;

5. Customs search;

6. Stop and Frisk; and

7. Exigent and Emergency Circumstances."<sup>[27]</sup>

The warrantless arrest of accused-appellant was effected under Sec. 5(a) Rule 113<sup>[28]</sup> of the Rules of Court, which is an arrest of a suspect *in flagrante delicto*.<sup>[29]</sup>

For this type of warrantless arrest to be valid, two requisites must concur: (1) the person to be arrested must execute an overt act indicating that he has just committed, is actually committing, or is attempting to commit a crime; and (2) such overt act is done in the presence or within the view of the arresting officer.<sup>[30]</sup>

In the instant case, the arrest of Margaja was valid because at the time he was arrested, he was committing a crime *in flagrante delicto*. When the arresting officers arrived, they saw in plain view, the hand gun tucked in Margaja's waist. The carrying of firearm in a public place<sup>[31]</sup> is prohibited under RA 8294.<sup>[32]</sup> Likewise, Margaja is in violation of COMELEC Resolution No. 8714 otherwise known as The Rules and Regulations on the: (1) Bearing, Carrying or Transporting of Firearms or Other Deadly Weapons; and (2) Employment, Availment or Engagement of the Services of Security Personnel or Bodyguards, During the Election Period for the May 10, 2010 National and Local Elections. The pertinent provision of the COMELEC Resolution, reads:

"Section 1. General Guiding Principles –During the election period: (a) no person shall bear, carry or transport firearms or other deadly weapons in public places including all public buildings, streets, parks, and private vehicles or public conveyances, even if licensed to possess or carry the same; and (b) no candidate for public office, including incumbent public officers seeking election to any public office, shall employ, avail himself of or engage the services of security personnel or bodyguards are regular members of officers of the Philippine National Police (PNP), the Armed Forces of the Philippines (AFP) or other law enforcement agency of the Government.

The transport of firearms of those who are engaged in the manufacture, importation, exportation, purchase, sale of firearms, explosives and their spare parts or those involving the transportation of firearms, explosives and their spare parts, may, with prior notice to the Commission, be authorized by the Director General of the PNP provided that the firearms, explosives and their spare parts are immediately transported to the