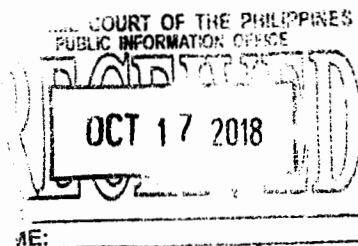




Republic of the Philippines  
 Supreme Court  
 Manila



FIRST DIVISION

PEOPLE OF THE PHILIPPINES,  
*Plaintiff-Appellee,*

G.R. No. 229940

- versus -

Present:

LEONARDO-DE CASTRO, C.J.,  
 BERSAMIN,  
 DEL CASTILLO,  
 JARDELEZA, and  
 TIJAM, JJ.

JIMBOY SUICO y ACOPE,  
*Accused-Appellant.*

Promulgated:  
SEP 10 2018

X ----- 

DECISION

DEL CASTILLO, J.:

This is an appeal filed by appellant Jimboy Suico y Acope from the October 21, 2016 Decision<sup>1</sup> of the Court of Appeals (CA) in CA-G.R. CR-HC No. 01329-MIN, affirming the July 25, 2014 Decision<sup>2</sup> of the Regional Trial Court (RTC) of Malaybalay City, Branch 8, in Criminal Case No. 22228-11, finding appellant guilty beyond reasonable doubt of illegal transportation of dangerous drugs under Section 5, Article II of Republic Act (RA) No. 9165,<sup>3</sup> otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

Appellant was charged with violation of Section 5, Article II of RA 9165 in an Information<sup>4</sup> which reads:

That on or about the 4<sup>th</sup> day of September 2011, in the morning, at Purok 12, Poblacion, municipality of Cabanglasan, province of Bukidnon, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously keep, hold and possess and transport marijuana leaves with fruiting tops with the use of a motorcycle – motor star color



<sup>1</sup> CA rollo, pp. 110-127; penned by Associate Justice Maria Filomena D. Singh and concurred in by Associate Justices Oscar V. Badelles and Perpetua T. Atal-Paño.

<sup>2</sup> Records, pp. 63-98; penned by Presiding Judge Isobel G. Barroso.

<sup>3</sup> AN ACT INSTITUTING THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002, REPEALING REPUBLIC ACT NO. 6425, OTHERWISE KNOWN AS THE DANGEROUS DRUGS ACT OF 1972, AS AMENDED, PROVIDING FUNDS THEREFOR, AND FOR OTHER PURPOSES.

<sup>4</sup> Records, pp. 2-3.

red with a combination of black and gray without plate number, with an aggregate weight of 2,400 grams, [per] Chemistry Report No. D-101-2011BUK, without authority nor permit from the government to possess the same.

CONTRARY to and in violation of Article II Section 5, R.A. 9165.<sup>5</sup>

During arraignment, appellant pleaded not guilty. Thereafter, trial on the merits ensued.

The prosecution's evidence, consisting of the testimonies of Police Chief Inspector Ellen Variacion-Avanzado (PCI Avanzado), PO3 Joesvin Paciente (PO3 Paciente), PO1 Nelber Berdon (PO1 Berdon), and PO3 Glenn Agpalza (PO3 Agpalza), as summarized by the appellate court, is as follows:

[In] the morning of 4 September 2011, at around 8:30 x x x an Alert Team composed of five police officers, namely: the Chief of Police of Cabanglasan, Bukidnon, Police Inspector Erwin R. Naelga (PINSP Naelga), PO3 Joesvin Paciente (PO3 Paciente), PO2 Rowland Linaban, PO1 Nelber Berdon (PO1 Berdon), and PO1 Christopher Sibayan were at Purok 12, Brgy. Poblacion, Cabanglasan, Bukidnon to set-up and man a checkpoint to implement a 'no plate, no travel' policy.

At around 9:00 in the morning, while the Team was manning the checkpoint, PINSP Nealga received a text message from an informant saying that there is an approaching red Motorstar motorcycle with a black and gray color combination driven by a person carrying a backpack and a yellow sack containing *marijuana*.

At around 9:30 in the morning, the members of the team saw a motorcycle approaching the checkpoint. Upon seeing the checkpoint, the motorcycle immediately made a u-turn, however, the driver of the motorcycle fell down. The driver then disembarked from the motorcycle and then attempted to run. However, one of the members of the team was able to hold the backpack of the driver after he fell down and the other members of the team requested him to open it. Subsequently, the driver admitted that he was carrying *marijuana*. He thereafter opened the backpack, which contained 2 bundles of fresh *marijuana*, and the yellow sack, which also contained two bundles of fresh *marijuana*.

After confiscating the backpack and the sack containing *marijuana*, the driver of the motorcycle was apprised of his Constitutional rights and thereafter taken to the police station where an inventory of the seized items was made. The preparation of the said inventory was witnessed by the Municipal Mayor of Cabanglasan, Bukidnon. Photographs were taken after the inventory of the confiscated items.

After making the inventory, the members of the Team turned over the confiscated items to the duty investigator at that time, [PO3 Agpalza], who after marking them, brought the items to the Provincial Crime Laboratory together with the members of the apprehending team.

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<sup>5</sup> Id. at 2.

At around 3:30 in the afternoon, [PCI Avanzado] received a request for a crime laboratory examination signed by PINSP Naelga together with specimens contained in the backpack and yellow sack brought by PO3 Agpalza. After conducting a qualitative examination on the specimens, all four gave a positive result for being *marijuana*.<sup>6</sup>

The evidence for the defense, meanwhile, consisted of the lone testimony of the appellant himself. Appellant denied liability and claimed that he was framed-up. His testimony, as summarized by the appellate court, is as follows:

On September 4, 2011, [appellant] was at Sitio Luringan, Caban[g]lasan, Bukidnon peddling generic medicines. While driving his motorcycle on his way home, an armed group of 15 indigenous peoples known as the Lumads blocked his way, held his shoulders, and took the key of his motorcycle.

The Lumads then made [appellant] go down from his motorcycle and took his backpack containing money and the medicines that he was selling. The Lumads then scattered the contents of the backpack on the ground and divided it among themselves.

[Appellant's] hands were then tied behind his back with a rope by the Lumads. He was then made to ride his motorcycle together with two Lumads who took him to a two-storey house in the town center of Cabanglasan, Bukidnon.

After about 15 minutes, two motorcycles driven by the companions of the Lumads who brought [appellant] to the house, arrived. They brought with them the backpack that they took from [appellant] and a sack that contained *marijuana*.

[Appellant] then overheard the owner of the house where he was brought calling the Mayor of Cabanglasan, Bukidnon. After twenty minutes, two people arrived in the house, one introducing himself to the owner of the house as the Mayor. [Appellant] then narrated to the Mayor what happened but he did not listen to him.

The Mayor then called the police, who arrived after ten minutes. The police officers then untied [appellant] to replace the rope with a handcuff. They then forced [appellant] to point to the backpack and the bag containing *marijuana* while they took pictures of him. He was then brought to the police station.<sup>7</sup>

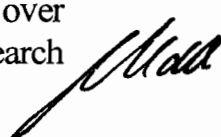
### ***Ruling of the Regional Trial Court***

In a Decision<sup>8</sup> dated July 25, 2014, the RTC held that the prosecution had established beyond reasonable doubt the culpability of appellant for illegal transportation of *marijuana* through the positive and credible testimonies of witnesses who were law enforcers. The RTC did not give credence to appellant's defense of frame-up, denial and alibi as they were inherently weak and could not prevail over the positive assertions of police witnesses. The RTC found that the warrantless search

<sup>6</sup> CA rollo, pp. 111-113.

<sup>7</sup> Id. at 113-114.

<sup>8</sup> Records, pp. 63-98.



and seizure made by the apprehending officers was valid and that the chain of custody requirements were substantially complied with. The RTC thus ruled:

WHEREFORE, in view of all the foregoing, accused Jimboy Suico y Acope is hereby found GUILTY beyond reasonable doubt of [v]iolation of Section 5, Article II of RA 9165 and is hereby sentenced, as mandated under the said provision, to LIFE IMPRISONMENT and for him to PAY A FINE of Five Hundred Thousand Pesos.

The dangerous drugs submitted as evidence in this case are ordered transmitted to the PDEA for destruction and/or disposition in conformity with pertinent laws, rules and regulations.

SO ORDERED.<sup>9</sup>

Aggrieved, appellant appealed to the CA.

### ***Ruling of the Court of Appeals***

Appellant argued that there was failure to preserve the integrity of the seized *marijuana* because of the serious lapses committed by the arresting team in complying with the procedure in the custody and disposition of seized drugs. He claimed that the prosecution failed to sufficiently establish by proof beyond reasonable doubt the *corpus delicti* of the offense charged.

In a Decision<sup>10</sup> dated October 21, 2016, the CA sustained the conviction of appellant. It held that the warrantless search and seizure was validly conducted and that the illegal transportation of dangerous drugs by appellant was adequately established. It affirmed the RTC's disquisition that appellant's lone testimony could not prevail over the positive testimony of the police authorities who were presumed to have regularly performed their official duties in the absence of any ill motive.

The CA likewise ruled that the totality of the evidence adduced by the prosecution pointed to an unbroken chain of custody from the moment the four bundles of *marijuana* were seized from appellant up to the time these were presented in court. The CA explained that the prosecution was able to "categorically demonstrate that the items seized from [appellant] at the checkpoint were the same ones marked by the police, tested at the crime laboratory, and introduced, identified, testified to and offered in open court."<sup>11</sup> The CA held that the chain of custody rule was substantially complied with as the identity and integrity of the seized drugs had not been compromised.

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<sup>9</sup> Id. at 97-98.

<sup>10</sup> CA *rollo*, pp. 110-127.

<sup>11</sup> Id. at 125.

Hence, appellant instituted this present appeal, arguing in his Appellant's Brief<sup>12</sup> that the failure of the prosecution to prove compliance with the mandatory requirements of Section 21 of RA 9165 regarding the preservation of the seized item's evidentiary integrity must necessarily lead to his acquittal. Appellant maintains that the arresting officers' failure to immediately mark the items upon seizure raised a reasonable doubt on the authenticity of the *corpus delicti* of the offense charged. He likewise argues that the prosecution failed to establish the identity of the seized items because the evidence merely showed that the marking was done in the presence of the arresting team and not in his presence. Appellant also mentions a glaring gap in the chain of custody of the confiscated item since the officer who received the specimen in the crime laboratory did not testify. Appellant further doubts the veracity of his arrest.

### Our Ruling

The appeal is unmeritorious.

*Appellant's arrest was valid. The warrantless search and seizure was valid.*

At the outset, it should be emphasized that appellant can no longer question the legality of his arrest which should have been raised in a motion to quash the Information filed prior to his arraignment. When he failed to file such motion, appellant was deemed to have submitted himself to the jurisdiction of the trial court which precluded him from questioning the legality of his arrest.<sup>13</sup>

In any event, the arrest of appellant and the incidental search and seizure of appellant's backpack and sack containing *marijuana* were both valid. The arresting team in this case was tasked to man a checkpoint in *Purok 12, Poblacion, Cabanglasan, Bukidnon* in the implementation of a "no plate, no travel" policy. PINSP Naelga received information that a person carrying a backpack and yellow sack suspected of containing *marijuana* was riding a red with black and gray combination Motorstar motorcycle and was bound for *Poblacion*.<sup>14</sup> When the motorcycle approached the checkpoint, the driver (appellant) immediately made a u-turn and fell down from the motorcycle.<sup>15</sup> Appellant then attempted to run but one of the police officers, PO1 Berdon, managed to grab and get a hold of the backpack and yellow sack of appellant.<sup>16</sup> Upon the request of the arresting officers, appellant opened the backpack while admitting that what was inside was dried *marijuana*.<sup>17</sup> The arresting officers saw two bundles of dried *marijuana* inside the backpack and

<sup>12</sup> Id. at 23-37.

<sup>13</sup> *People v. Lara*, 692 Phil. 469, 483 (2012).

<sup>14</sup> TSN, September 10, 2013, pp. 6-8; TSN, February 4, 2014, pp. 6-8.

<sup>15</sup> Id. at 9; id. at 9.

<sup>16</sup> TSN, February 4, 2014, p. 10.

<sup>17</sup> TSN, September 10, 2013, pp. 9-10.



another two bundles of dried *marijuana* in the yellow sack.<sup>18</sup> The arresting officers thereafter apprised appellant of his legal rights and brought appellant and the illegal drugs to the police station.<sup>19</sup>

Normally, “searches and seizures are x x x unreasonable unless authorized by a validly issued search warrant or warrant of arrest.”<sup>20</sup> However, searches incidental to lawful arrests, as in this case, are allowed even without a warrant.<sup>21</sup> As correctly ruled by both the lower courts, the police officers had probable cause to justify the belief that appellant was an offender of the law and that the contents of the backpack and sack he was carrying were instruments of an offense not only in light of the confidential tip they received from an informant but also because of appellant’s peculiar acts of making a sudden u-turn before reaching the checkpoint and attempting to run when the motorcycle he was driving crashed. Indeed, the arresting officers were impelled to effect the arrest and seizure because of a probable cause. Given that the search was valid, the arrest was likewise lawful because it was made upon the discovery of the prohibited drug in appellant’s possession.

*Illegal transportation of dangerous drugs  
was established.*

“The essential element of the charge of illegal transportation of dangerous drugs is the movement of the dangerous drug from one place to another.”<sup>22</sup> As used under the Dangerous Drugs Act, “transport” means “to carry or convey from one place to another.”<sup>23</sup> The fact of an actual conveyance or transportation itself is sufficient to support a finding that the criminal act was committed.<sup>24</sup>

Here, it was well established during trial that appellant was caught carrying a backpack and sack with bundles of *marijuana* when he was flagged down on board his motorcycle. The prosecution had proven in the trial the fact of transportation of dangerous drugs. Appellant’s denial and defense of frame-up cannot be given credence. The Court has ruled that “[these] defenses x x x, like alibi, has been invariably viewed by the courts with disfavor for it can just as easily be concocted x x x.”<sup>25</sup> We agree with the lower courts that appellant’s unsubstantiated lone testimony cannot prevail over the positive testimonies of the police officers in view of the presumption of regularity in the performance of their duty and in the absence of any improper motive.<sup>26</sup>

<sup>18</sup> Id.; TSN, February 4, 2014, pp. 12-13.

<sup>19</sup> Id. at 16; Id. at 14.

<sup>20</sup> *Veridiano v. People*, G.R. No. 200370, June 7, 2017, 826 SCRA 382, 397-398.

<sup>21</sup> *People v. Cogaed*, 740 Phil. 212, 227-228 (2014).

<sup>22</sup> *People v. Asislo*, 778 Phil. 509, 522 (2016).

<sup>23</sup> *People v. Morilla*, 726 Phil. 244, 252 (2014).

<sup>24</sup> *People v. Mariacos*, 635 Phil. 315, 333-334 (2010).

<sup>25</sup> *People v. Ygot*, 790 Phil. 236, 241 (2016).

<sup>26</sup> *People v. Pasion*, 752 Phil. 359, 369-370 (2015).

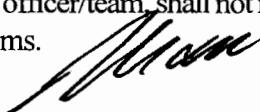
*The integrity and evidentiary value of seized drugs were preserved. There was an unbroken chain of custody.*

Appellant's contention that the prosecution failed to establish the chain of custody of evidence fails to sway. The testimonies of PO3 Paciente and PO1 Berdon revealed that, after the confiscation of the black backpack and yellow sack with four bundles of *marijuana* at the checkpoint, the members of the apprehending team led by PINSP Naelga brought appellant and the confiscated items to the police station and turned them over to PO3 Agpalza who was the duty investigator at that time. The prosecution's documentary and testimonial evidence showed that the marking, physical inventory, and taking of photographs of the seized items were all done at the police station and witnessed by Rogelio C. Castellanes, the Municipal Mayor of Cabanglasan, Bukidnon. PO3 Agpalza then testified that, after marking the items, he personally brought the same to the Bukidnon Provincial Crime Laboratory for examination of the forensic chemist, PCI Avanzado. PCI Avanzado in turn categorically testified that he received the illegal drugs and that the examination yielded a positive result for *marijuana*.

Contrary to the assertion of appellant, there was compliance with the provision of Section 21, Article II of RA 9165, as amended by RA 10640<sup>27</sup> which provides:

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 x x x so confiscated, seized and/or surrendered, for proper disposition in the following manner:

(1) The apprehending team having initial custody and control of the dangerous drugs, x x x shall, immediately after seizure and confiscation, conduct a physical inventory of the seized items and photograph the same in the presence of the accused or the persons from whom such items were confiscated and/or seized, or his/her representative or counsel, with an elected public official and a representative of the National Prosecution Service or the media 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, finally*, That noncompliance of 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 and custody over said items.



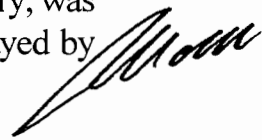
<sup>27</sup> AN ACT TO FURTHER STRENGTHEN THE ANTI-DRUG CAMPAIGN OF THE GOVERNMENT, AMENDING FOR THE PURPOSE SECTION 21 OF REPUBLIC ACT NO. 9165, OTHERWISE KNOWN AS THE "COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002". Approved July 15, 2014.

Here, the physical inventory was made at the police station by the apprehending officers/arresting team as shown by their signatures in the Receipt/Inventory of Property Seized.<sup>28</sup> As the law now stands, the apprehending officer has the option whether to mark, inventory, and photograph the seized items immediately at the place where the drugs were seized, or at the nearest police station, or at the nearest office of the apprehending officer, whichever is the most practicable or suitable for the purpose. In this case, the apprehending officers found it more practicable to mark, inventory, and photograph the seized drugs at the police station. As aptly noted by the CA, the marking at the place of confiscation which was a checkpoint was rather difficult considering that it was in the middle of a public road.

Other than appellant's bare assertion, there appears nothing in the record to prove that appellant was absent during the inventory, marking, and taking of photographs. On the other hand, the evidence extant in the record shows that the appellant himself, together with the seized items, were turned over at the police station and that photographs were taken of the illegal drugs and appellant. There is no doubt that the seized illegal drugs were marked, inventoried, and photographed in the presence of appellant.

Appellant argues that the inconsistencies in the testimony of prosecution witnesses as to who was in possession of the seized items from the place of arrest to the police station cast doubt on the prosecution evidence, warranting acquittal on reasonable doubt. We find no apparent inconsistencies in the testimonies that will dent the case of the prosecution. PO3 Paciente testified that the seized items were turned over to the police station by the five police officers of the apprehending team which was led by PINSP Naelga.<sup>29</sup> This was corroborated by PO1 Berdon when he stated that it was he who held the backpack and sack upon confiscation and handed them over to PINSP Naelga who in turn brought the items to the police station.<sup>30</sup> It has been held that "[t]estimonies of witnesses need only corroborate each other on important and relevant details concerning the principal occurrence."<sup>31</sup> The identity of the person who actually held the backpack and sack is immaterial. What is of utmost importance is the preservation of the integrity and the evidentiary value of the seized drugs. In this case, there was no evidence that the four bundles of *marijuana* found inside the backpack and sack were altered, tampered with, contaminated, substituted, exchanged, or planted.

Appellant finally argues that the absence of testimony of PO1 Romeo Adlaon, Jr. (PO1 Adlaon), the officer who received the specimen in the crime laboratory, was fatal and constituted a glaring gap in the chain of custody. We are not swayed by



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<sup>28</sup> Records, p. 8.

<sup>29</sup> TSN, September 10, 2013, p. 34.

<sup>30</sup> TSN, February 4, 2014, p. 27.

<sup>31</sup> *People v. Libnao*, 443 Phil. 506, 519 (2003).



appellant's argument that the non-presentation of PO1 Adlaon as witness was fatal to the prosecution's case. As the Court held in *People v. Padua*.<sup>32</sup>

[N]ot all [the] 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

The testimony of forensic chemist, PCI Avanzado, categorically demonstrated that the items he tested/examined at the crime laboratory were the same ones seized from appellant as specified in the inventory prepared by the apprehending team. Hence, we find the integrity of the drugs seized intact and entertain no doubt that the drugs seized from appellant were the same ones submitted for examination.

In fine, we sustain the trial court and the CA's finding that the requirements under RA 9165 have been sufficiently complied with. In light of the prosecution's evidence, both testimonial and documentary, the lower courts correctly concluded that the identity, integrity and probative value of the seized *marijuana* were adequately preserved. The prosecution has sufficiently established an unbroken chain of custody over the seized *marijuana*, from the time the apprehending officers seized the drugs to the time it was brought to the police station, then to the crime laboratory for testing until the same was offered in evidence before the court.

The Court, therefore, sustains the conviction of appellant. As to the penalty, Article II, Section 5 of RA 9165 prescribes that the penalties for illegal transportation of dangerous drugs shall be life imprisonment to death and a fine ranging from ₱500,000.00 to ₱10,000,000.00. Thus, we find the penalty of life imprisonment and a fine of ₱500,000.00 imposed by the trial court and affirmed by the CA in order and proper.

**WHEREFORE**, the appeal is **DISMISSED**. The assailed October 21, 2016 Decision of the Court of Appeals in CA-G.R. CR-HC No. 01329-MIN, affirming the July 25, 2014 Decision of the Regional Trial Court of Malaybalay City, Branch 8, in Criminal Case No. 22228-11, finding appellant Jimboy Suico y Acope **GUILTY** beyond reasonable doubt of illegal transportation of dangerous drugs under Section 5, Article II of Republic Act No. 9165 is **AFFIRMED**.



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<sup>32</sup> 639 Phil. 235, 251 (2010).

**SO ORDERED.**

  
**MARIANO C. DEL CASTILLO**  
*Associate Justice*

WE CONCUR:

  
**TERESITA J. LEONARDO-DE CASTRO**  
*Chief Justice*

  
**LUCAS P. BERSAMIN**  
*Associate Justice*

  
**FRANCIS H. JARDELEZA**  
*Associate Justice*

(On official leave)  
**NOEL GIMENEZ TIJAM**  
*Associate Justice*

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

  
**TERESITA J. LEONARDO-DE CASTRO**  
*Chief Justice*