



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

PEOPLE OF THE PHILIPPINES, **G.R. No. 238873**
Plaintiff-Appellee,

Present:

- versus -

PERALTA, *CJ.*, Chairperson,
CAGUIOA,
REYES, J., JR.,
LAZARO-JAVIER, and
LOPEZ, *JJ.*

SUNDARAM MAGAYON y
FRANCISCO,
Defendant-Appellant.

Promulgated:

SEP 16 2020

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DECISION

LAZARO-JAVIER, J.:

The Case

This appeal assails the Decision dated January 26, 2018¹ of the Court of Appeals in CA-G.R. CR-HC No. 01411-MIN affirming the trial court's verdict of conviction against appellant Sundaram Magayon y Francisco for violation of Section 11, Article II of Republic Act 9165 (RA 9165) or the Comprehensive Dangerous Drugs Act of 2002.

¹ Penned by Court of Appeals Associate Justice Perpetua T. Atal-Paño and concurred in by Associate Justices Edgardo A. Camello and Walter S. Ong, *rollo*, pp. 3-27.

The Proceedings before the Trial Court

The prosecution filed two (2) separate Informations against appellant for violation of Sections 5 and 11 of RA 9165, docketed as Crim. Case 10738 and 10739. Since appellant was already acquitted in Criminal Case 10738, this Decision will only focus on Crim. Case 10739. The Information reads:

That on or about the evening of August 3, 2004 at 6th Street, Guingona Subdivision, Barangay 25, JP Rizal, Butuan City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without authority of law, did then and there willfully, unlawfully and feloniously have in his possession, control and custody two hundred seventy six point nine six six two (276.9662) grams of dried marijuana fruiting tops and one bundle of marijuana stalks weighing one hundred four point three four zero three (104.3403) grams, which is a dangerous drug.

CONTRARY TO LAW: (Violation of Sec. 11, Art. II, of RA No. 9165).²

On arraignment, appellant pleaded not guilty.³

During the trial, PO2 Rey Gabrielle Busa Maderal (PO2 Maderal),⁴ Barangay Kagawad Carmelita Torres Mangasep (Barangay Kagawad Mangasep), and Police Senior Inspector (PSI) Norman Gales Jovita (PSI Jovita) testified for the prosecution.⁵ On the other hand, Richard Bentoso Amado (Amado) and appellant himself testified for the defense.⁶

Version of the Prosecution

PO2 Maderal testified that on August 3, 2004, about 6 o' clock in the evening, he, SPO4 Inocencio Amora (SPO4 Amora), PO3 Estelito Gono (PO3 Gono), PO2 Jaime delos Santos (PO2 delos Santos) and several other police officers conducted a buy-bust operation on appellant residence on 6th Street, Guingona Subdivision, Barangay 25, Jose P. Rizal, Butuan City.

PO2 delos Santos accompanied the confidential asset to the store which formed part of appellant's house. He (PO2 Maderal) stood near the store where he could clearly see the asset and PO2 delos Santos. When he saw the asset exchange the one hundred peso (₱100.00) marked money with a teabag-sized packet of alleged marijuana from appellant, he and his companions closed in and arrested appellant.

² Record, p. 1.

³ *Id.* at 26.

⁴ In some parts of the record, this witness is sometimes referred to as PO3 Maderal.

⁵ *Rollo*, p. 4.

⁶ *Id.* at 8.

The *poseur*-buyer handed the packet of marijuana to PO2 delos Santos who, in turn, gave it to him (PO2 Maderal) for safekeeping. He recovered the marked money from appellant's "wife"⁷ who received it from appellant right after the transaction. He and the other police officers informed appellant he was being arrested for illegally selling marijuana.⁸

SPO4 Amora informed appellant of the search warrant they had on his premises.⁹ They waited for barangay officials and media personnel to arrive before they commenced the search.¹⁰ Appellant and his "wife," too, were present during the search. The search yielded seventy-four (74) small packets¹¹ of marijuana in different parts of the house including the store. Inside appellant's room, they found a plastic bag of marijuana and marijuana inside a yellow plastic ice cream container.

In the presence of the barangay officials and the appellant, he prepared the inventory of the seized items. He further identified the pictures taken during the search including those of the seized items.¹²

He also prepared the certificate of orderly search which the witnesses from the barangay and the media signed. But since appellant refused to sign the certificate, the words "not willing to sign" were written on the space provided for appellant's signature. Thereafter, appellant, his "wife," and the seized items were brought to the police station for booking and investigation. He kept custody of the items.¹³

At the police station, he and the other arresting officers prepared the booking, indorsement to the PNP Crime Laboratory of the items, return on the search warrant, and affidavit of apprehension.¹⁴

He was among those who signed the affidavit of apprehension. He identified his and his companions' signatures thereon. The seized items were surrendered to the court which issued the search warrant. Subsequently, with leave of court, the items were submitted to the crime laboratory for chemical examination. He himself delivered the items to the crime laboratory on the same day. He affirmed that the items he delivered were the same items recovered from appellant.¹⁵

⁷ The witnesses for the prosecution referred to this person as appellant's wife but appellant claimed that she was only his girlfriend.

⁸ TSN dated August 10, 2006, pp. 5-6.

⁹ *Id.* at 9-10.

¹⁰ *Id.* at 11.

¹¹ Nineteen (19) packets of marijuana were found in a black bag and a cellophane bag, another twenty-six (26) and twenty-nine (29) packets were found in the store and a room, all inside appellant's house *id.* at 13-14.

¹² *Id.* at 14-20.

¹³ ₱100 peso marked money, a total of seventy-four (74) small packets of marijuana, a plastic bag of dried marijuana stalks, and dried crushed marijuana leaves in a yellow plastic ice cream container.

¹⁴ TSN dated August 10, 2006, pp. 21-22.

¹⁵ *Id.* at 21-27.

On cross, he testified that SPO4 Amora, PO2 delos Santos and the police asset applied for a search warrant around 11 o' clock in the morning of August 3, 2004 after they did a test buy earlier that day. During the buy-bust, the police operatives were already accompanied by some barangay kagawads. They started the search of the premises only after the other barangay officials had arrived, together with the staff of DXBC and ABS-CBN.¹⁶ In response to the trial court's clarificatory questions, PO2 Maderal averred that he clearly saw the exchange of illegal drugs and money between appellant and the *poseur*-buyer as he observing them from just beside the store.¹⁷

Barangay Kagawad Mangasep testified that in the afternoon of August 3, 2004, a police officer, whose name she could no longer recall, came to her house and requested her to witness a raid that he and his companions were about to conduct.¹⁸ When she arrived at the place, Kagawad Sisora, other police officers, and media personnel were already there. Only then did the search begin.¹⁹

After the search and seizure had ended, the police officers gathered and inventoried all the things they found and seized. Photographs of the seized items were taken before the same were brought to the police station.

Barangay Kagawad Mangasep signed an inventory and certification. She also identified her signature and those of her fellow barangay kagawad and the media personnel.²⁰ On cross, she admitted she was not present during the buy-bust operation.²¹ During the search, she, Kagawad Manuel Sisora (Kagawad Sisora), two (2) media personnel, some police officers, appellant and his "live-in partner" were present.²²

Forensic Chemist **PSI Jovita** testified that he received three (3) laboratory requests from Police Chief Inspector (PCI) Martin Mercado Gamboa (PCI Gamboa) in connection with the buy-bust against appellant and the search of his premises. These requests referred to the: 1) request for examination of one (1) tea bag of purported marijuana recovered during a test buy; 2) request for examination of one (1) tea bag of suspected marijuana subject of a buy-bust operation with marking "RBM-A1-08-03-04" (BUY-BUST); and 3) request for examination of seventy four (74) tea bags/packets of alleged marijuana, marked as "RBM-A1-08-03-04 up to RBM-A19-08-03-04," "RBM-B1-08-03-04 up to RBM-B26-08-03-04," "RBM-C1-08-03-04 up to RBM-C29-08-03-04," and a plastic bag and a plastic ice cream container also containing suspected marijuana. These items came from the search done on the premises.²³ He immediately marked the items, as follows:

¹⁶ TSN dated January 11, 2007, pp. 3-5.

¹⁷ *Id.* at 89-10.

¹⁸ TSN dated June 18, 2007, p. 3.

¹⁹ *Id.* at 9.

²⁰ *Id.* at 4-6.

²¹ *Id.* at 7.

²² *Id.* at 9.

²³ TSN dated April 28, 2008, p. 7; *see also* request for examination (Exhibit O) and Chemistry Report No. D-127-2004 in the Exhibits Folder.

1. Chemistry Report D-125-2004
Specimen A-1 – for one (1) heat-sealed transparent plastic sachet with markings “RBM-A1-08-03-04”
2. Chemistry Report D-126-2004
Specimen A-1 – for one (1) heat-sealed transparent plastic packet with markings “RBM-A1-08-03-04 BUY-BUST”
3. Chemistry Report D-127-2004
Specimen A-1 – A-19 – for one (1) leather bag color black with markings “RBM-A-08-03-04” containing nineteen (19) heat sealed transparent plastic packets with markings “RBM-A1-08-03-04” up to “RBM-A19-08-03-04”

Specimen B-1 – B-26 – for one (1) knot-tied plastic bag color white and red with markings “RBM-B-08-03-04” containing twenty-six (26) heat sealed transparent plastic packets with markings “RBM-B1-08-03-04” up to “RBM-B26-08-03-04”

Specimen C-1 – C-29 – for one (1) knot-tied plastic bag color white and red with markings “RBM-C-08-03-04” containing twenty-nine (29) heat sealed transparent plastic packets with markings “RBM-C1-08-03-04” up to “RBM-C29-08-03-04”

He weighed and tested the specimens and found them positive for marijuana. He recorded his findings in three (3) separate chemistry reports,²⁴ which he identified in open court. He brought all the items when he testified in court. When asked by the prosecutor what assurance he could give the court pertaining to the identity and integrity of these items, he replied that the items bore his markings which he personally inscribed as soon as he received them.²⁵

After the prosecution witnesses had completed their testimony, the prosecution offered in evidence: 1) Search Warrant No. 416-2004 dated August 3, 2004; 2) Return on the search warrant; 3) Joint Affidavit of Apprehension; 4) Certificate of Inventory; 5) Certification stating that the raid conducted pursuant to the search warrant was done in a proper and orderly manner; 6) photocopy of the ₱100.00 marked money; 7) request for laboratory examination of one (1) packet/teabag of suspected marijuana; 8) photocopy of the police blotter entry on the buy-bust operation/raid conducted; 9) Chemistry Report No. D-126-2004 on one (1) plastic bag of

²⁴ Although all three (3) chemistry reports are on record, the prosecution only formally offered two (2) of them as will be discussed further below.

²⁵ TSN dated April 28, 2008, pp. 8-19.

marijuana fruiting tops weighing 6.3253 grams; 10) Chemistry Report No. D-127-2004 on the seventy four (74) packets, one (1) cellophane bag, and one (1) plastic ice cream container of marijuana which were recovered during the search; 11) a piece of coupon bond containing three (3) photographs of the marked money and the packet of suspected illegal drugs taken from a room; 12) a piece of coupon bond containing three (3) photographs of the plastic packets of marijuana; 13) a piece of coupon bond containing two (2) photographs: one showing appellant's mug shot and another showing the house and store subject of the raid; 14) a piece of coupon bond containing three (3) photographs of the seized items and inventory; 15) request for laboratory examination of the suspected marijuana; 16) request for withdrawal of the seized items from the court for laboratory examination; 17) cellophane pack containing 6.3253 grams of marijuana subject of the buy-bust; 18) cellophane bag containing the seventy four (74) packets of marijuana and the rest of the items subject of the search;²⁶ 19) appellant's Counter-Affidavit dated February 2, 2005;²⁷ and 20) appellant's Counter-Affidavit dated August 14, 2004.²⁸

Version of the Defense

Amado testified that on August 3, 2004, he went to Purok 7, Barangay Obrero, Butuan to take his lunch. A festivity was ongoing there.

Appellant's sister-in-law is Amado's cousin. Hence, he knew appellant because they had already met before. That day, they had a drinking session in the house of Amado's cousin. Around 2 o'clock in the afternoon, appellant asked him to accompany appellant in going to the rented house of the appellant's girlfriend on 6th Street, Guingona Subdivision.

Amado and appellant reached the place around 3 o'clock in the afternoon. The house had a store. It was the first time he met appellant's girlfriend. He only knew her as "Che-che." Appellant went inside the store where his girlfriend was while Amado stayed outside about five (5) meters away.

After appellant and his girlfriend briefly talked, Amado asked appellant if he could use the toilet inside Che-che's rented house. But appellant told him the owner of the house would not allow it. Appellant instead asked him to use the toilet in the house of appellant's sister around thirty (30) meters away.

Amado left the house of Che-che and proceeded to the house of appellant's sister. After relieving himself, he returned to the store. There, he was surprised to see people setting up a cordon around the place. A person went inside the store. Later, appellant, who was already handcuffed, and his

²⁶ CA rollo, pp. 62-63.

²⁷ This was marked and verbally offered in the course of appellant's cross-examination, *id.* at 25.

²⁸ *Id.* at 26.

girlfriend were brought outside. The police did a search inside the store. Appellant and his girlfriend were boarded into the patrol car.²⁹

Appellant testified that on August 3, 2004, he visited his brother at the latter's residence in Barangay Obrero, Butuan City. While he and his brother were drinking, Amado arrived and joined them. Sometime after, he asked Amado to go with him to the rented house of his girlfriend in Guingona Subdivision. His girlfriend's rented house was attached to a store. He decided to see his girlfriend to ask for money to buy additional bottles of "Tanduay" for himself and his companions. They headed to his girlfriend's house on board Amado's motorcycle and got there in ten (10) minutes.³⁰

He went inside the store and asked his girlfriend for a bottle of "Tanduay." Meanwhile, someone also came to buy a "Sprite." Then they heard three (3) knocks on the door. It was a man holding a folder. The man showed him the folder on which the words "search warrant" were written. He was surprised to see his name on the "search warrant."

The man, together with three (3) others, searched the store. They recovered marijuana from his girlfriend's bag and a one hundred peso (₱100.00) bill from his girlfriend's wallet. They compared the bill with a photocopy they had at that time. They laid the items on the table, wrote on a piece of paper "Certificate of Inventory," and listed all the items they were able to recover. They made him sign a document. They later called for Barangay Kagawad Mangasep who was also made to sign a document. They gathered all the items on the table and brought him to the police station.³¹

There, a media person arrived and he was forced to answer questions in the presence of his girlfriend and the men who had arrested him. One (1) of the questions was whether he owned the seized items. He did not answer. Someone advised him to secure the services of a lawyer. Another advised him to admit his ownership of the items so that he and his girlfriend would be set free. Two (2) men also advised him not to admit to anything. Since he was so confused, he said he would consult a lawyer first.³²

On cross, he stated that Syntyche Litera ("Cheche") had only been his girlfriend for about a month when the buy-bust and search happened. Cheche was previously married to Noel Lanciola. It was Cheche who rented the place where the raid took place. As far as he knew, Cheche was the only one who resided there.

Appellant admitted he had executed two (2) counter-affidavits with assistance of his counsel *de parte*, Atty. Nelbert Poculan (Atty. Poculan).³³ In his first Counter-Affidavit dated August 14, 2004, he stated:

²⁹ TSN dated February 20, 2012, pp. 7-11.

³⁰ TSN dated January 15, 2015, pp. 3-4.

³¹ *Id.* at 7-8.

³² *Id.* at 8-10.

³³ *Id.* at 13-14, 20-21.

I, SUNDARAM MAGAYON y Francisco, 31 years old, single and a resident of 6th St., Guingona Subd., Butuan City, after having been sworn to in accordance with law, do hereby depose and say THAT:

I am the same Sundaram F. Magayon, who is one of the respondents in the complaint filed by SPO4 Inocencio T. Amora for [violation] of Sec. 11[,] Art. II of RA 9165, for the search and seizure of several sachets of marijuana leaves that occurred on Aug. 3, 2004 at around [6] o' clock in the evening at 6th St., Guingona Subd.;

My [live-in] partner, Syntyche Litera y Lamacang, alias Cheche, has nothing to do with the activities that transpired in our residence;

The marked money that was found in her possession came from me because I handed it to her because I was about to take a bath;

That these marijuana leaves were left at my residence. I was about to report it to the authorities but the policemen must have heard of it because they raid[ed] my residence on August 3, 2004.

I am executing this affidavit for leniency from the authorities and that I be allowed to apply for the benefits of the Probation Law. Further, Syntyche should be absolved of any criminal liability since she is completely innocent thereof.

IN WITNESS WHEREOF, I hereunto affix my signature this 14th day of August, 2004 in Butuan City, Philippines.³⁴

In his second Counter-Affidavit dated February 2, 2005, he averred:

I, SUNDARAM MAGAYON, of legal age, single and a resident of 6th St., Guingona Subd., Purok 4, Brgy. 25, JP Rizal, Butuan City, after having been sworn to in accordance with law, do hereby depose and say THAT:

I am the same person who stands accused before the Regional Trial Court of Agusan del Norte x x x Butuan City, Branch 4 for Violation of Sections 5 & 11, Art. II of RA 9165;

I asked for [a] reinvestigation of said case because the truth of the matter, is that I am not a pusher or [a] peddler of prohibited drugs but only a USER of the same;

It is not true that there was a poseur buyer who bought the illegal drugs, as manifested by the fact that he did not execute an affidavit to corroborate the statement of the police authorities;

The alleged prohibited drugs found in my possession were for my own personal use and not for sale or distribution to buyers;

There was an illegal seizure and search because the search warrant did not specifically mentioned what items were to be searched from my residence, nor did it specifically contain the right address;

I am executing this affidavit to state that I am only a USER of the prohibited drugs and not a pusher thereof, and that I be admitted to a rehabilitation center.

I know the legal consequences in executing this affidavit.

IN WITNESS WHEREOF, I hereunto [affix] my signature this 2nd day of February, 2005 in Butuan City, Philippines.³⁵

In open court, appellant stressed that he was not a pusher but only a user.³⁶ He claimed that the paragraph pertaining to his drug use was the only statement that was true in his second affidavit while the rest was someone else's idea.³⁷ He nonetheless admitted that the packets of marijuana shown in the photographs were taken from the place where he got arrested and the items were likewise marked and inventoried there.³⁸ On the stand, he asserted that it was Cheche's former husband who left the drugs in her house. Atty. Poculan did not force him to execute his affidavits.³⁹ Although there were false statements in the counter-affidavits, he did not blame Atty. Poculan for them.⁴⁰

The Trial Court's Decision

By its Omnibus Decision⁴¹ dated March 13, 2015, the trial court rendered a verdict of conviction against appellant for illegal possession of drugs under Section 11, Article II of RA 9165. It relied heavily on the following circumstances: (a) civilian witnesses accompanied the police officers during the search, (b) the inventory of the seized items was signed by appellant and the civilian witnesses; (c) the apprehending officers followed the rules on service of a search warrant and submitted a return thereon together with the request for withdrawal of items for laboratory examination; and (d) as possession may be actual or constructive, it was enough that "the prohibited items were found in [appellant's house], despite his protestation that the store was [only] leased by his girlfriend."⁴² In sum, the trial court found that the prosecution was able to prove all the elements of the offense charged. The trial court disposed, thus:

WHEREFORE, premises considered, the Court finds accused Sundaram Magayon y Francisco guilty beyond reasonable doubt in Criminal Case No. 10739 for violation of Section 11, of Article II of Republic Act 9165 (Comprehensive Dangerous Drugs Act of 2002), and considering that the weight of the prohibited drug is three hundred eighty-one point three zero six five (381.3065) grams (par. 2, Section 11, Art. II of

³⁵ CA rollo, p. 25.

³⁶ TSN dated January 15, 2015, pp. 10-14.

³⁷ *Id.* at 15.

³⁸ *Id.* at 19-20.

³⁹ *Id.* at 21.

⁴⁰ *Id.* at 21-23.

⁴¹ Penned by Judge Godofredo B. Abul, Jr., CA rollo, pp. 58-68.

⁴² *Id.* at 66-67.

Republic Act 9165), accused is hereby sentenced to undergo imprisonment of an indeterminate penalty of twenty (20) years and one (1) day as minimum to thirty (30) years as maximum and to pay a fine of five hundred thousand pesos (P500,000.00) without subsidiary imprisonment in case of insolvency.

Accused shall serve his sentence at the Davao Prison and Penal Farm at Braulio E. Dujali, Davao del Norte and shall be credited [with] his preventive imprisonment conformably with Article 29 of the Revised Penal Code, as amended.

The marijuana are [sic] declared forfeited in favor of the government to be dealt with accordingly.

In Criminal Case No. 10738, for violation of Section 5, Article II of Republic Act 9165, for insufficiency of evidence, accused Sundaram Magayon y Francisco is acquitted of the charge.

SO ORDERED.⁴³

The Proceedings before the Court of Appeals

On appeal, appellant faulted the trial court for rendering the verdict of conviction despite the alleged irregularities in the service of the search warrant, the seizure of the drugs, and the chain of custody. He argued, in the main:

First, the search was not valid and the items seized during the search were inadmissible in evidence against him. For while the search warrant only authorized the police to search the house, they also searched the store. Considering that an earlier test buy was conducted by the police officers, they should have been already familiar with the place to be searched; hence, they should have included the store in their application for the search warrant. Their failure to do so violated Section 2, Article III of the Constitution which requires the search warrant to describe with particularity the place to be searched.⁴⁴ More, he did not witness the search as required under Section 8, Rule 126 of the Rules of Criminal Procedure.⁴⁵

Second, the prosecution failed to prove that he was the owner of the searched premises or that he exercised control over the place.

⁴³ *Id.* at 67-68.

⁴⁴ Section 2, Article III of the 1987 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.

⁴⁵ Section 8, Rule 126 of the Rules of Criminal Procedure states:

SECTION 8. *Search of House, Room, or Premises to Be Made in Presence of Two Witnesses.* — No search of a house, room, or any other premises shall be made except in the presence of the lawful occupant thereof or any member of his family or in the absence of the latter, two witnesses of sufficient age and discretion residing in the same locality.

Third, the arresting officers failed to comply with the chain of custody requirements. There was allegedly no immediate marking of the seized items nor any showing that appellant witnessed the marking. The Certificate of Inventory lumped all the items together without any segregation *vis-à-vis* the specific place or places where the specimens were recovered. The Certificate of Inventory was also allegedly irregular because it did not bear the name and signature of PO2 Maderal. It was not PO2 Maderal who identified the seized items in court but the forensic chemist. The chain of custody should include testimony on every link in the chain from the moment the prohibited drugs were confiscated until they were offered in evidence.

On the other hand, the Office of the Solicitor General (OSG) through Assistant Solicitor General Rex Bernardo L. Pascual and Associate Solicitor Christian P. Castro, countered: (a) the search warrant clearly stated that the place to be searched was appellant's "rented residence and its premises located on 6th Street, Guingona Subdivision, Barangay 25, Jose P. Rizal, Butuan City" which necessarily included the store that formed part of the house; (b) the prosecution witnesses categorically testified that appellant and his "wife" were present during the search; (c) appellant cannot evade the verdict of conviction since he had constructive possession of the premises which he shared with his girlfriend or his "wife;" (d) appellant already admitted that the marijuana packets were seized from the house subject of the search warrant and any objection to the admissibility of the seized evidence based on non-compliance with Section 21, Article II of the RA 9165 cannot be raised for the first time on appeal; and (e) even assuming there was non-compliance with Section 21, the objection did not impact the admissibility but merely the weight of the evidence, hence, the trial court's factual findings in relation thereto must be respected.

The Court of Appeals affirmed through its assailed Decision⁴⁶ dated January 26, 2018. It held in the main:

First, appellant did not assail the search warrant before the trial court, nor object to its offer in evidence, much less, move to quash the search warrant. Hence, his objections against the search warrant and the admissibility of the seized items should be deemed waived.

Second, the judge correctly found probable cause to issue the search warrant as it was applied for only after an earlier test buy yielded positive results.

Third, the search was done in accordance with the Rules of Court.

Fourth, there was evidence on record that appellant resided with his girlfriend/live-in partner at the address stated in the search warrant.

⁴⁶ Rollo, pp. 3-27.

Fifth, likewise appellant may no longer assail the chain of custody for the first time on appeal.

Sixth, the evidence on record showed that there was no break in the chain of custody and that the integrity of the confiscated items was not compromised.

The Present Appeal

Appellant prays anew for his acquittal.

In compliance with the Resolution dated July 11, 2018,⁴⁷ the OSG⁴⁸ manifested that it was no longer filing a supplemental brief as all matters and issues had already been adequately discussed in its Appellee's Brief before the Court of Appeals.

Appellant, in turn, filed a Supplemental Brief dated December 6, 2018.⁴⁹

Issues

- (1) Was the search conducted on the store valid?
- (2) Was appellant's guilt for violation of Section 11, Article II of RA 9165 (illegal possession of dangerous drugs) proved beyond a reasonable doubt?

Ruling

1(a). Appellant's failure to object to the search warrant and the evidence adduced below precludes him from belatedly interposing his objections in the present proceedings.

It is a matter of record that **appellant never assailed the search warrant and the evidence emanating therefrom before the trial court.** As the appellate court correctly observed, **appellant's objections were belatedly raised on appeal and, thus, are deemed waived.**

In *People v. Nuñez*, the Court had the opportunity to state that "any objection to the legality of the search warrant and the admissibility of the

⁴⁷ *Id.* at 33-34.

⁴⁸ *Id.* at 37-39.

⁴⁹ *Id.* at 43-57.

evidence obtained thereby was deemed waived when no objection was raised by appellant during trial. For sure, the right to be secure from unreasonable searches and seizures, like any other right, can be waived and the waiver may be made expressly or impliedly.”⁵⁰ So must it be.

1(b). The search warrant described the place to be searched with sufficient particularity as required by the Constitution.

We reckon with Section 2, Article III of the Constitution:

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.

Appellant argues that the search warrant did not specifically mention the store to be among the places to be searched thereby violating the *proviso* that the place or places to be searched must be described with particularity.

The rule is that **a description of the place to be searched is sufficient if the officer with the warrant can, with reasonable effort, ascertain and identify the place intended and distinguish it from other places in the community. Any designation or description known to the locality that points out the place to the exclusion of all others, and on inquiry, leads the officers unerringly to it, satisfies the constitutional requirement.**⁵¹ A search warrant is deemed to have **described the place to be searched with sufficient particularity when the premises have been identified as being occupied by the accused.**⁵²

As aptly found by the courts below, the **search warrant here stated that the place to be searched was appellant’s “rented residence and its premises located [on] 6th Street, Guingona Subdivision, Barangay 25, Jose P. Rizal, Butuan City.”**

The apprehending officers became and were in fact familiar with the place to be searched as a result of the test buy which they had conducted just hours before the search. Further, appellant **has not denied that the store formed part of the “rented residence” and was not a separate structure.**

⁵⁰ 609 Phil. 176, 185 (2009).

⁵¹ *Uy v. Bureau of Internal Revenue*, 397 Phil. 892, 907-908 (2000); see also *People v. Posada y Sontillano*, 768 Phil. 324, 330 (2015).

⁵² See *People v. Salangit*, 408 Phil. 817, 833 (2001).

PO2 Maderal categorically testified that the store was part of the house and it was an open space on which a curtain hung as a divider.⁵³

We therefore find no cogent reason to disturb the common findings of the courts below that **the house and its appurtenant store were found at the same address indicated in the search warrant**. Hence, appellant's protestation that the search warrant failed to describe the place to be searched with sufficient particularity must fail.

1(c). The police officers fully complied with the Rules on the conduct of a valid search.

Section 8, Rule 126 ordains:

SECTION 8. *Search of House, Room, or Premises to Be Made in Presence of Two Witnesses.* — No search of a house, room, or any other premises shall be made except in the presence of the lawful occupant thereof or any member of his family or in the absence of the latter, two witnesses of sufficient age and discretion residing in the same locality.

Although appellant does not dispute the fact that there were at least two (2) witnesses who were present during the search, he asserts that **he himself did not witness it**. This claim, however, is **belied by the categorical testimonies of the prosecution witnesses PO2 Maderal and Barangay Kagawad Mangasep that he and his girlfriend/common law wife were actually present during the search**. The Court of Appeals, too, aptly noted that **appellant himself testified that he witnessed the search** conducted by the police. We quote with approval the Court of Appeals' relevant disquisition:

Also, this Court noted that Magayon was able to give a clear sequence of events when he recounted the search, which strongly bespeaks of his presence while the same was ongoing. Pertinent parts of his testimony states:

ATTY. RULIDA:

So, what happened after the search?

MAGAYON:

After the search, Sir, I noticed that they recovered marijuana from the bag of my girlfriend and a tea bag of marijuana.

Q: After they discovered those items that you mentioned, what happened next?

⁵³ TSN dated August 10, 2006, p. 13.

A: After that, they searched the wallet of my girlfriend.

Q: After searching the wallet of your girlfriend, what happened next?

A: They recovered the P100.00 bill.

Q: After they recovered the P100.00 bill, what did they do to it, if any?

A: After that, they compared the P100.00 bill recovered from the wallet of my girlfriend and the Xerox copy that they have at that time.

Q: After that, what happened, if any?

A: After that, Sir, they placed the items on a table.

The above precise statements of Magayon demonstrate how he actually witnessed the search. He obviously saw how and where the items were recovered thus, negating his claim that the search was not done in his presence.⁵⁴

The testimony of **defense witness Amado** that appellant and his girlfriend were outside the house/store when the search was conducted was rejected by both courts below for being **devoid of credence**. Surely, Amado **would not have known better** than appellant himself who testified that he and his girlfriend/wife were in fact present during the search, even as Amado went to the toilet to relieve himself some thirty (30) or fifty (50) meters away.

Whether to believe the version of the prosecution or that of the defense, the trial court's factual findings thereon is generally viewed as correct and entitled to the highest respect. For it had the opportunity to observe the witnesses' demeanor and deportment on the witness stand as they gave their testimonies.⁵⁵ More so, where the trial court's factual findings on the credibility of witnesses carry the full concurrence of the Court of Appeals, as in this case. No compelling reason exists here to deviate from this rule.

2(a). The evidence on record show that appellant did have dominion and control over the place of subject of the search.

The elements of illegal possession of dangerous drugs under Section 11, Article II of RA 9165 are: (1) **possession** by the accused of an item or object identified to be a prohibited drug; (2) the possession is **not authorized by law**; and (3) the **free and conscious possession** of the drug by the accused.⁵⁶

⁵⁴ Rollo, p. 20.

⁵⁵ See *People v. Alboka*, 826 Phil. 487, 498 (2018).

⁵⁶ *People v. Obias, Jr., y Arroyo*, G.R. No. 222187, March 25, 2019.

Possession under the law includes not only **actual possession** but also **constructive possession**. **Actual possession** exists when the drug is in the immediate physical possession or control of the accused. On the other hand, **constructive possession** exists when the drug is under the dominion and control of the accused or when he has the right to exercise dominion and control over the place where it is found.

Exclusive possession or control is **not** necessary. The accused cannot avoid conviction if his control and dominion over the place where the contraband is located were shared with another.⁵⁷

Appellant nonetheless contends that he could not be guilty of illegal possession of dangerous drugs in view of the prosecution's alleged failure to prove that he owned or controlled the house and the store where the confiscated items were found. Appellant asserts that it was his girlfriend who rented the place subject of the search and she lived there alone.

The Court of Appeals correctly rejected this argument. For it was **plainly stated in appellant's own counter-affidavits that he resided in the address specified in the search warrant and where the search was actually conducted**. Specifically, in his Counter-Affidavit dated August 14, 2004, he stated that he and Cheche were live-in partners. Although, on the witness stand, appellant subsequently disavowed certain portions of his counter-affidavits, **the recanted statements did not include appellant's address nor the fact that he and Cheche were living together**. Appellant is **now estopped** from claiming otherwise. He is bound by the admissions in his sworn statements duly identified and marked in court. An admission in open court is a judicial admission.⁵⁸ In fine, appellant cannot disclaim his control and dominion over the place subject of the search where subject drugs were found.

2(b). Appellant's inculpatory admissions sustain his conviction and Section 21, Article II of RA 9165 will not come into play.

Records indubitably show that **appellant had frankly admitted his possession of the enormous amount of prohibited drugs** which found in and seized from his residence.

To recall, appellant testified that **during the investigation at the police station** he refrained from answering the police officers' questions and told them he wished to consult with a lawyer first.

⁵⁷ *People v. Batoon*, 650 Phil. 569, 578 (2010).

⁵⁸ *People v. Lacson*, 459 Phil. 330, 365 (2003).

Appellant, thereafter, secured the services of counsel *de parte*, Atty. Poculan. With the able assistance of Atty. Poculan, he executed and submitted his counter-affidavits to the Office of the City Prosecutor.

In his Counter-Affidavit dated February 2, 2005,⁵⁹ he stated that “the alleged **prohibited drugs found in [his] possession were for [his] personal use** and not for sale or distribution to buyers.” Too, in his earlier Counter-Affidavit dated August 14, 2004,⁶⁰ appellant **tried to absolve his girlfriend from any liability, as he stated, “[his] live in partner, Syntyche Litera y Lumacang alias [Che-che], had nothing to do with the activities that transpired in [their] residence” and “[t]he marked money that was found in her possession came from [him] because [he] handed it to her because [he] was about to take a bath.”**

Clearly, appellant **knowingly took full responsibility for the seized drugs** in his counter-affidavits.

Extrajudicial confessions are admissible in evidence, provided they are: 1) voluntary; 2) made with the assistance of a competent and independent counsel; 3) express; and 4) in writing.⁶¹ Here, **appellant’s admissions in his counter-affidavits are binding on him as they were knowingly and voluntarily made with assistance of his counsel of choice, Atty. Poculan.**

Although appellant later on tried to retract the foregoing statements in court, claiming it was not true that Cheche was blameless and it was in fact her former husband who owned the seized marijuana, his belated attempt to diffuse his past damaging admissions must fail. For courts may believe one part of the testimony of a witness and disbelieve another part. Courts are not required to accept or reject the whole of the testimony of a particular witness.⁶² While case law holds that recantations do not necessarily cancel out an earlier declaration, ultimately, it should still be treated like any other testimony and as such, its credibility must be tested during trial.⁶³

On this score, **the Court of Appeals correctly took into account that appellant was not an unlettered person but was a third year college student majoring in Elementary Education; hence, he readily understood the statements in his counter-affidavits and could have refused to sign them if they were untrue. He did not charge his lawyer with incompetence, neglect or impropriety. He did not adduce evidence of coercion or intimidation from anyone. These counter-affidavits were notarized, the first, by appellant’s own counsel, and the second, by the city prosecutor. It cannot be gainsaid then that appellant’s extrajudicial admissions can stand on their own to support a verdict of conviction.**

⁵⁹ This was identified by appellant and marked as the prosecution’s Exhibit R.

⁶⁰ This was also identified by appellant and marked as the prosecution’s Exhibit S.

⁶¹ See *People v. Canatoy*, G.R. No. 227195, July 29, 2019.

⁶² *People v. Bombesa*, 245 Phil. 359, 364 (1988).

⁶³ *Balois-Alberto v. Court of Appeals*, 711 Phil. 530, 556-557 (2013).

In *Regalado v. People*,⁶⁴ Regalado admitted that he possessed the seized marijuana but contended that the apprehending officers did not fully comply with Section 21, Article II of RA 9165. The Court held that Regalado's damning admission warranted the affirmance of his conviction, albeit we sternly reminded police officers to be mindful of their duty to comply with the statutorily mandated procedure in drugs cases, lest their lapses become fatal to the prosecution's cause.

Here, **appellant already admitted several times his possession of a large quantity of marijuana and did not pose substantial objections to the identity and integrity of the drugs confiscated at the place of his arrest.** The case records flatly contradicted his objections to the chain of custody of the seized drugs in question.

Section 21, Article II of RA 9165 on the chain of custody rule outlines the procedure that police officers must follow in handling the seized drugs in order to ensure the preservation of their integrity and evidentiary value.⁶⁵ To establish the identity of the dangerous drug with moral certainty, the prosecution must be able to account for each link of the chain of custody from the moment the drugs are seized up to their presentation in court as evidence of the crime.⁶⁶

Here, the **testimonies of PO2 Maderal and the forensic chemist sufficiently established every link in the chain of custody from the time the prohibited drugs were seized and inventoried right after the search at the place of the search, to the time they were brought to the police station for the booking, investigation, and forensic analysis, up until the prohibited drugs were presented in court.**

Contrary to appellant's claim, the fact that PO2 Maderal's testimony focused on his preparation of the inventory and the documents relative to the investigation did not mean he was not present during the search. In fact, his testimony was replete with details which could have only been known by one who was personally present during the search.

On the marking of the seized items, **appellant himself admitted that the seized drugs were marked and inventoried at the time and place of the search.** Surely, he **could not have made** such a confirmation if the marking and inventory **had not been made** in his presence as required by Section 21.

Further, there is **no law or rule** requiring that the inventory should **segregate** the seized items according to the specific place in the house or store where they were found. The **law simply and solely mandates** that an inventory of **all** the seized items be made by the apprehending officer/team. Notably, **appellant himself admitted** in court that the **items subject of the**

⁶⁴ G.R. No. 216632, March 13, 2019.

⁶⁵ See *People v. Año y Remedios*, 828 Phil. 439, 448 (2018).

⁶⁶ *People v. Acabo*, G.R. No. 241081, February 11, 2019.

inventory as photographed by the police officers **were indeed recovered from the place** where the search and arrest were made.

In sum, **appellant admitted the identity and integrity** of the drugs seized from his residence and those presented in court, although appellant did not specify the exact quantity or amount of drugs. In his Counter-Affidavit dated August 14, 2004, he categorically admitted that the police found the prohibited drugs in his residence, thus:

X X X X

That these marijuana leaves were left at my residence. I was about to report it to the authorities but the policeman must have heard of it because they raid my residence on August 3, 2004.

X X X X

Five (5) months later, he admitted the prohibited drugs were found in his possession and for his personal use in his second Counter-Affidavit dated February 2, 2005, viz.:

X X X X

The alleged prohibited drugs found in my possession were for my own personal use and not for sale or distribution to buyers;

X X X X

I am executing this affidavit to state that I am only a USER of the prohibited drugs and not a pusher thereof, and that I be admitted to a rehabilitation center.

I know the legal consequences in executing this affidavit.
(Emphasis added)

As shown, appellant categorically stated that he knew the consequences of his admissions. He was even assisted by counsel when affixed his signature on his counter-affidavit. As the final nail in the coffin, appellant even stressed in open court that he was not a pusher but only a user.⁶⁷ These admissions are already sufficient to establish that he indeed illegally possessed the prohibited drugs. His belated, nay, self-serving claim that the drugs confiscated by the police belonged to another must, therefore fail. They cannot prevail over his prior categorical admissions which he voluntarily and knowingly made with assistance of counsel.

It is immaterial that appellant's counter-affidavit did not specify the amount of drugs found in his possession. This does not negate the applicability of *Regalado*. A plain reading of his second counter-affidavit readily shows

⁶⁷ TSN dated January 15, 2015, pp. 10-14.

that he admitted to owning all 381.3065 grams of marijuana recovered during the search. Notably, when he executed his second counter-affidavit on February 2, 2005, about six (6) months after he got arrested, **he already knew by then that he was being charged with illegal possession of 381.3065 grams of marijuana.** Yet he still admitted ownership thereof **without qualification** as to its quantity.

Thus, the trial court and the Court of Appeals cannot be faulted for construing the counter-affidavit as an admission of ownership and possession of the entire amount recovered. There was no piecemeal admission here. It was either appellant owned the entire quantity or none at all. As it was, the trial court and the Court of Appeals, in their final evaluation of the evidence before them, found that between appellant's admission, on the one hand, and his recantation, on the other, the former is more deserving of weight and credit.

There exists no cogent reason to depart from these factual findings of the courts below. At any rate, appellant ought not to be allowed to swing from one version of facts to another. The Court should not condone his act of foisting different narratives to muddle the facts case and confuse the courts.

Suffice it to state that the large amount of the confiscated drugs involved here and appellant's own inculpatory judicial admissions go against the possibility of planting or substitution by the police. Neither could appellant's mere denial and inconsistent statements overcome the positive testimonies of the prosecution witnesses.⁶⁸ This is especially true when there were shown not to have any ulterior motive to falsely testify against him in such grave offense of illegal possession of prohibited drugs.

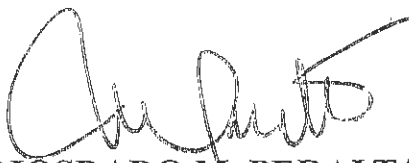
ACCORDINGLY, the appeal is **DENIED**, and the Decision dated January 26, 2018 in CA-G.R. CR-HC No. 01411-MIN, **AFFIRMED**.

Sundaram Magayon y Francisco is found **GUILTY** of illegal possession of drugs under Section 11, Article II of RA 9165 and sentenced to indeterminate penalty of twenty (20) years and one (1) day as minimum to thirty (30) years as maximum and to pay a fine of five hundred thousand pesos (P500,000.00) without subsidiary imprisonment in case of insolvency.

SO ORDERED.


AMY C. LAZARO-JAVIER
Associate Justice

⁶⁸ See *People v. Buenaventura*, 677 Phil. 230, 240 (2011).

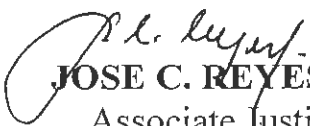
WE CONCUR:

DIOSDADO M. PERALTA
Chief Justice
Chairperson – First Division

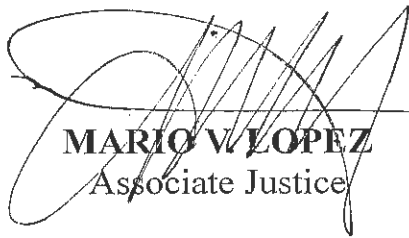
*See Dissenting
Opinion*



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice



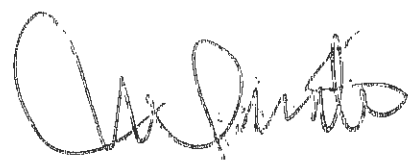
JOSE C. REYES, JR.
Associate Justice



MARIO V. LOPEZ
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VII 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.



DIOSDADO M. PERALTA
Chief Justice

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