

SECOND DIVISION

[G.R. No. 235956, December 05, 2018]

**ARJAY GUTIERREZ Y CONSUELO @ "RJ", PETITIONER, VS.
PEOPLE OF THE PHILIPPINES, RESPONDENT.**

DECISION

A. REYES, JR., J.:

This resolves the petition for review filed under Rule 45 of the Rules of Court by petitioner Arjay Gutierrez y Consuelo @ "RJ" (Gutierrez) to assail the Decision^[1] dated June 28, 2017 and Resolution^[2] dated November 21, 2017 of the Court of Appeals (CA) in CA-G.R. CR No. 38431, which affirmed his conviction for violation of Section 11, Article II of Republic Act (R.A.) No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

The Facts

Gutierrez was charged before the Regional Trial Court (RTC) of Pasig City with violation of Section 11, Article II of R.A. No. 9165 *via* an Information^[3] that reads:

On or about October 16, 2014, in Pasig City and within the jurisdiction of this Honorable Court, the accused, not being lawfully authorized to possess any dangerous drug, did then and there willfully, unlawfully and feloniously have in his possession and under his custody and control five (5) heat-sealed transparent plastic sachets containing dried marijuana fruiting tops having the following recorded net weights: 0.16 gram; 0.15 gram; 0.12 gram; 0.14 gram; 0.14 gram; and one folded Marlboro cigarette paper containing 0.18 gram or with a total weight of 0.90 gram of dried Marijuana fruiting tops, which were all found positive to the test for Marijuana, a dangerous drug, in violation of the said law.

Contrary to law.^[4]

Upon arraignment, Gutierrez entered the plea of "not guilty."^[5] After termination of the pre-trial conference, trial on the merits ensued.

Version of the Prosecution

The prosecution intended to present the following witnesses during the trial: (1) Police Senior Inspector Anghelisa S. Vicente (PSI Vicente), (2) Police Officer 2 Merlito B. Baturi (PO2 Baturi), and (3) Police Officer 3 Nelson G. Cruz (PO3 Cruz). Gutierrez was allegedly caught by PO2 Baturi in possession of *marijuana*, which was the subject of an examination made by PSI Vicente. During the initial presentation of the prosecution's evidence, however, the testimony of PSI Vicente was dispensed

with given the following stipulations of facts that were jointly made by the trial prosecutor and the defense counsel:

(1) that [PSI] Vicente is a Forensic Chemist assigned at the PNP-EPD Crime Laboratory Office, Mandaluyong City; (2) that the witness is an expert in the field of Forensic Chemistry; (3) that the witness received the Request for Laboratory Examination, dated October 17, 2014, together with the specimens described in the request; (4) that upon receipt of the specimens, the witness conducted the physical, chemical and confirmatory test on the specimens submitted; (5) that the result of her examination is contained in the Physical Science Report No. D417-14E; (6) that the witness sealed the specimens and placed her marking thereon; (7) that she brought to [the RTC] the EPD Crime Laboratory's receiving copy of the letter-request for laboratory examination, the white copy of the Physical Science Report and the subject drugs; (8) the existence and due execution of the Physical Science Report No. D-417-14E and the Request for Laboratory Examination; (9) that the witness has no personal knowledge of the source and origin of the specimens subject of this case; (10) that the specimens she received were the same specimens she brought and submitted to the court; (11) that she has no personal knowledge of the circumstances leading to the arrest of the accused; and (12) that the evidence examined by the forensic chemist were already pre-marked when she received the same.^[6]

Physical Sciences Report No. D-417-14E^[7] referred to in the foregoing and which indicated the results of PSI Vicente's laboratory examination provided as follows:

FINDINGS:

Qualitative examination conducted on the above-stated specimens gave POSITIVE result to the tests for the presence of Marijuana, a dangerous drug x x x

CONCLUSION:

Specimens A to F contain Marijuana, a dangerous drug x x x^[8]

The circumstances that led to the prior arrest of Gutierrez and the confiscation of the subject drugs were testified on by another member of the Philippine National Police, PO2 Baturi. He narrated in court that on October 16, 2014, at around 10:00 p.m., he was in an outpost within the Police Community Precinct (PCP) 6, Pasig City Police Station situated at Westbank Road, Floodway, when the Tactical Operation Center of the Pasig City Police Station Unit received a call from a concerned citizen about a group of male persons causing alarm and scandal, also along West Bank Road, Floodway. After receipt of the report, PO2 Baturi and PO1 Jeffrey Cangas (PO1 Cangas), together with members of the Barangay Security Force (BSF) of Barangay (Brgy.) Maybunga, acted on the matter and immediately went to the area where the persons were allegedly creating noise and trouble. There, they saw a group of five or six persons who were shouting and uttering unpleasant words. PO2 Baturi, in particular, arrested Gutierrez. After informing Gutierrez of his arrest for alarm and scandal followed by a statement of his constitutional rights, PO2 Baturi proceeded to conduct a routine body search for possible possession of illegal objects. Upon

making a body frisk, PO2 Baturi recovered from Gutierrez a flip-top box that contained a plastic sachet with suspected dried *marijuana*. PO2 Baturi then informed Gutierrez of his arrest also for illegal possession of *marijuana*. Gutierrez and the other persons arrested were brought to the precinct, where the confiscated pieces of evidence were presented to the duty officer and markings thereon were made.^[9] Specifically, the markings on the evidence were as follows:

- 1) first plastic sachet: 1MBB/ACG, with date 10-16-2014 and PO2 Baturi's signature;
- 2) second plastic sachet: 2MBB/ACG-10-16-2014 and signature;
- 3) third plastic sachet: 3MBB/ACG-10-16-2014 and signature;
- 4) fourth plastic sachet: 4MBB/ACG-10-16-2014 and signature;
- 5) fifth plastic sachet: 5MBB/ACG-10-16-2014 and signature;
- 6) folded cigarette pack containing dried *marijuana* leaves: 6MBB/ACG-10-16-2014 and signature.
- 7) flip-top box that contained the 5 plastic sachets and 1 cigarette pack: 7MBB/ACG-10-16-2014.^[10]

Those who were present during the marking by PO2 Baturi were PO1 Cangas, the BSF of Brgy. Maybunga, PO2 Baturi's commander, the admin personnel of the precinct and Gutierrez.^[11]

An Inventory of Seized Evidence^[12] was later prepared, presented and signed at the barangay hall by PO2 Baturi before one Kagawad Pozon, a barangay official of Brgy. Maybunga to whom Gutierrez was also presented. Gutierrez and Kagawad Pozon were likewise among those who signed the inventory.^[13] PO2 Baturi explained his failure to prepare the inventory at the place of arrest, and the other matters that affected the handling of the confiscated items by testifying that:

PROS. PONPON

x x x x

Q: Why was it that you did not prepare [the inventory] at the place of the arrest?

A: Because it was a remote area and we don't have necessary form of inventory of seized evidence.

Q: Why is it that you did not did you (sic) not prepare the inventory at PCP 6?

A: We need to make the inventory in the presence of the barangay official as well as in the presence of the accused because that was the prerequisite, sir.

Q: Before you start preparing the inventory, why you did (sic) not summon the presence of a representative from the media?

A: We don't have contact with the media, sir.

Q: Why did you not summon the presence of the representative from the National Prosecution Service?

A: Because we will file the case at the court of law, sir.

Q: After you prepared the inventory, what happened next, if any?

A: Thereafter, we proceeded to the SAID Office to prepare for the necessary papers for the filing of the case, sir.

Q: From the place where you arrested the accused up to the barangay hall of Brgy. M[a]ybunga, who was in possession of the evidence that you confiscated from the accused?

A: The evidence was with me, sir.

Q: From the barangay, where did you proceed?

A: To the [Station Anti-Illegal Drugs (SAID)] Office to turn over the evidence confiscated from the suspect as well as the suspect to the duty investigator of SAID Police Station.

Q: While in transit from the barangay hall of Brgy. Maybunga to the office of SAID, who was in possession of the evidence that you confiscated from the accused?

A: It was in my custody, sir.

Q: You said you went to the Office of SAID for the purpose of turned (sic) over the evidence to the SAID, what proof do you have to show that you actually turned over the evidence to SAID?

A: Because the duty investigator at the time took my affidavit of arrest regarding the arrest of the accused and the turned (sic) over of the evidence confiscated from the possession of the accused.^[14]

PO2 Baturi also identified during the trial^[15] a Chain of Custody Form^[16] that bore his signature and an indication that the confiscated items marked as 1MBB-ACG-10-16-2014 to 6MBB/ACG-10-16-2014 were turned over to PO3 Cruz, an Investigator of the Station Anti-Illegal Drugs Special Operation Task Group (SAID-SOTG) Pasig City. The trial prosecutor and defense counsel also opted to merely stipulate on the matters that were to be testified upon by PO3 Cruz, particularly:

(1) that the witness is the investigator on case; (2) that he prepared the Request for Laboratory Examination, Chain of Custody Form; and Request for Drug Test; (3) that the witness can identify the aforesaid documents; (4) that the evidence was turned over by PO3 Nelson Cruz to PSI Anghelisa S. Vicente as reflected in the Chain of Custody Form; (5) that the witness has no personal knowledge of the source and origin of the specimens subject of this case; (6) that he has no personal knowledge of the facts and circumstances leading to the arrest of the accused; and (7) that he received the specimens already pre-marked.^[17]

Version of the Defense

Only Gutierrez testified for his defense. He denied the charges against him as he claimed that on October 16, 2014, at around 10:30 p.m., he and his friends were hanging out, laughing and talking in front of his friend Russel's house along West Bank Road, Floodway, Maybunga, Pasig City when a police mobile car stopped before them. PO1 Cangas and PO2 Baturi alighted from the car and then frisked them even without first informing them of the reason for the body search. PO2 Baturi did not recover anything from Gutierrez during the frisk; Gutierrez and his friends were then ordered by the police to leave the place.^[18]

Gutierrez's group then did as was instructed, and thereafter proceeded to the house of one Erickson Irvin Inocando (Erickson) to eat. While inside Erickson's house, Gutierrez and his friends heard a commotion, so they peered outside and were surprised to again see PO1 Cangas and PO2 Baturi. The police officers approached Gutierrez's group. Gutierrez and Erickson were handcuffed, and then made to ride a patrol car without getting any explanation from the police. They were brought to PCP 6 and were told to admit as theirs a cigarette pack containing dried *marijuana*. When PO2 Baturi said that the cigarette pack was confiscated from Gutierrez, the latter opposed as he argued that nothing was found from him during the frisk. Gutierrez denied knowing where the cigarette pack came from. Out of fright, he still signed a document presented to him by the police even without reading its contents.^[19]

The Ruling of the RTC

On October 28, 2015, the RTC rendered its Judgment^[20] finding Gutierrez guilty as charged. For the trial court, PO2 Baturi made a valid warrantless arrest upon Gutierrez for causing disturbance in a public place. The frisk that was made following the lawful arrest yielded the confiscation of the plastic sachets and cigarette wrapper with suspected dried *marijuana* fruiting tops.^[21] A qualitative examination conducted on the specimens submitted for laboratory examination confirmed the items to be *marijuana*, a dangerous drug under R.A. No. 9165.^[22]

On the matter of sufficient compliance with the statutory requirements in the handling of the confiscated items, the RTC discussed:

Attached to the record of the case are the inventory of seized properties/items and photographs of the seized evidence. The inventory, however, bears no signature of the representative from the media or the National Prosecution Service. It has, however, the signature of an elected public official, Kagawad Pozon. PO2 Baturi also admitted that he marked the evidence not at the place of arrest but at the PCP 6 outpost and that the inventory and photographing of the evidence were done at the *barangay* hall of Maybunga.

The failure, however, of the arresting officer to comply strictly with the rule[,] specifically Section 21, Article II of RA 9165, as amended by Section 1 of RA 10640[,] is not fatal. It did not render accused'[s] arrest illegal nor the evidence adduced against him inadmissible. What is essential is "the preservation of the integrity and the evidentiary value of the seized items, as the same would be utilized in the determination of