

THIRD DIVISION

[G.R. No. 211680, September 21, 2016]

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. BELBAN SIC-OPEN
Y DIMAS, APPELLANT.**

DECISION

PERALTA, J.:

On appeal is the July 23, 2013 Decision^[1] and October 9, 2013 Resolution^[2] of the Court of Appeals (CA) in CA-G.R. CR-HC No. 05546, which affirmed the February 28, 2012 Decision^[3] and April 24, 2012 Order^[4] of the Regional Trial Court (RTC), Branch 8, La Trinidad, Benguet, in Criminal Case No. 09-CR-7596, convicting appellant Belban Sic-open y Dimas (*Belban*) of illegal sale of marijuana in violation of Section 5, Article II of Republic Act (R.A.) No. 9165 or the *Comprehensive Dangerous Drugs Act of 2002*.

In an Information dated February 26, 2009, Belban was charged as follows:

That on or about the 4th day of February, 2009, at Poblacion, Municipality of Kibungan, Province of Benguet, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without any authority of law, did then and there knowingly, willfully and unlawfully sell and deliver to **Intelligence Officer 1 Berto C. Chumanao**, a member of the Philippine Drug Enforcement Agency who acted as poseur-buyer, **Thirty (30) bricks of dried Marijuana**, a dangerous drug, with a total weight of **Twenty-Six Thousand Seven Hundred Sixty-Eight & 3/10 (26,768.3) grams**, in violation of said law.

CONTRARY TO LAW.^[5]

In his arraignment, Belban entered a plea of "Not Guilty."^[6] Trial ensued while he was under detention. The prosecution presented Intelligence Officer (IO) 1 Berto Chumanao (*Chumanao*), IO Maydette Mosing (*Mosing*), and IO Honoria Asiong (*Asiong*), Senior Police Officer (SPO) 4 Romeo Abordo (*Abordo*), Police Senior Inspector (PSI) Rowena Fajardo Canlas (*Canlas*), and PO1 Dennis Delos Reyes (*Delos Reyes*). Only Belban testified for the defense.

Evidence for the Prosecution

In the second week of December 2008, a male informant walked at the office of the Philippine Drug Enforcement Agency-Cordillera Administrative Region (*PDEA-CAR*) in Camp Bado Dangwa, La Trinidad, Benguet. As the one on duty at the time, Chumanao attended to the informant, who reported that a certain Belban was selling marijuana and looking for a buyer. The informant revealed that he was actually a middleman personally known to and engaged by Belban to find buyers,

but he wanted to change his life. After the disclosure, Chumanao turned him over to Police Chief Inspector and Officer-in-Charge Edgar S. Apalla (*Apalla*), who authorized him to "build-up" the case and form a buy-bust team if needed. Upon Chumanao's request, the informant gave him the cellphone number of Belban. The informant was likewise told to call Belban and introduce him as a buyer. Chumanao started communicating with Belban two to three days after. As the informant told him that Belban was from Kibungan, Benguet, he talked to him in Kankanaey dialect since he stayed in Sagpat, Kibungan for some years after getting married there. He texted Belban that he was the person who would buy the marijuana as told to him (*Belban*) by the informant. On December 15, 2008, Chumanao received a text message from Belban inquiring if he was still interested in buying marijuana. After replying in the affirmative, Belban said that the marijuana, which he referred to as "*nateng*" (vegetable), would be available in February 2009. When asked how many bricks he could sell, Belban responded that he could deliver thirty (30) bricks.

On February 3, 2009, Chumanao received a text message from Belban that the marijuana were already available at dawn of the following day. It was agreed that he would pick them up in Poblacion, Kibungan near the school between 3:00 a.m. and 4:00 a.m. With the information, Chumanao called IOs Macad, Mosing, and Asiong, who arrived at 3:00 p.m. They were briefed that they would proceed to Kibungan to meet Belban, who would be selling them marijuana. Their respective tasks as members of the buy-bust team were assigned - Chumanao as poseur-buyer, Asiong as arresting officer, Mosing as seizing officer, and Macad as the one who would read the constitutional rights of the accused. Also, the team prepared the boodle money consisting of two (2) Five Hundred Peso (P500.00) bills and fifty-eight (58) mimeo papers cut into money size. Chumanao placed his initials ("*BCC*") on the genuine P500.00 bills. By 12 midnight, they "jumped off to the meeting place from the PDEA field office in Melvin Jones, Baguio City using a service vehicle (Toyota Revo) with a driver. At 3:00 a.m. of February 4, they arrived in the area and parked at the Dangwa terminal located at the turning point of the Dangwa bus in Poblacion, Kibungan. After waiting for a few minutes, Belban approached them. Chumanao knew him because he texted him upon arrival and their service vehicle was the only one parked in the vicinity. Not wanting to stay long in the area, he immediately asked him where the marijuana was. Belban directed Chumanao to follow him. He alighted from the vehicle and went with him towards the road proceeding to the back of the school, which was about 30-45 meters away. The other members of the buy-bust team slowly followed using the service vehicle.

At the road side, two brown cartons tied with straw were placed near the school canteen. When Belban told Chumanao that they contained the marijuana, the latter checked one of the cartons. He untied a carton and saw square-shaped items individually wrapped in newspaper. After opening an item, he confirmed that it was marijuana in brick form. When Belban demanded the payment, Chumanao handed to him the boodle money. As Belban put it in the left pocket of his polo shirt, Chumanao grabbed his arm and told him, "*Arestado ka!*," which was the pre-arranged signal. The rest of the buy-bust team, who witnessed the unfolding of events while they were inside the trailing vehicle, then rushed to the scene and assisted in the arrest. Asiong handcuffed Belban, Mosing conducted a body search, and Macad read his constitutional rights. Mosing recovered a Nokia 6110 cellular phone, which she marked with her initial, signature, and date. The two cartons containing the marijuana bricks were taken and loaded inside the back of the vehicle. Chumanao opened the cartons and counted fifteen (15) bricks in each

carton. The 15 bricks were individually wrapped in newspapers and were collectively wrapped in a green plastic bag that was placed in each carton. Considering that it was still too dark and the team was anxious for its safety, a preliminary inventory of the seized items was made in the presence of Belban and the buy-bust team members. Using a Pentel pen, Chumanao wrote his initials, signature, and date on each of the 30 bricks, the two (2) green plastic bag, and the two cartons.

Thereafter, the buy-bust team, together with Belban, made a short stop at the Kibungan Police Station for the police blotter as well as to show the seized items and the person arrested.^[7] They immediately proceeded to Camp Dangwa, where they arrived at past 7:00 a.m. There, the team prepared the affidavits of the members of the buy-bust team, the booking sheet and arrest report, and the requests for physical examination on Belban and laboratory test on the drug items. Chumanao, Asiong, Macad, and Mosing then turned-over the drug (marijuana bricks with the containers) and non-drug items (cellular phone and boodle money) to SPO4 Abordo, who, as the Evidence Custodian of PDEA-CAR, conducted the inventory of the seized items.

The confiscated items were inventoried in the presence of the police officers, Belban, and the representatives of the Department of Justice (Special Prosecutor Winston T. Suaking), the media (Manny Fortuny), and the barangay (Kagawad Ponciano N. Tero), who then signed the inventory. Photographs of the inventory held were also taken. Thereafter, Abordo kept the non-drug items at the evidence room of Camp Dangwa, while he delivered the marijuana bricks to the PNP Crime Laboratory. PSI Canlas, the Forensic Chemist of PNP-CAR, was the one who actually received the request and the illegal drug. She was the one who conducted the physical, chemical, and confirmatory examinations, and concluded that all the specimens submitted were positive for the presence of marijuana. After issuing the final report, she turned-over the marijuana bricks to PO1 Delos Reyes, the Evidence Custodian of then PNP Crime Laboratory at Camp Dangwa, who locked them up in the evidence room for safekeeping until he brought them to the trial upon court order.

Evidence for the Defense

Belban, who was a resident of Legab, Kayapa, Bakun, Benguet, had been engaged in planting rice for fifteen (15) years. On February 4, 2009, he was in Kibungan because his brother, Sixto Sic-open, who was married in that place sent him a text message a day before. He was asked if he would like to come and see the Sayote Plantation in Epit, Kibungan that he (Sixto) was leasing and to decide if he would like to rent it also. He started to hike from Kayapa, Bakun at 9:00 p.m. and arrived at Poblacion, Kibungan around 2:00 a.m. He proceeded directly to the school canteen to wait for the 3:00 a.m. bus trip to Baguio City. While there, he noticed that there were other waiting passengers. The school canteen was in fact open and there were people inside drinking coffee. To secure a seat, he decided to go to the bus terminal, which was about forty (40) meters away. While on his way, a male passenger of a white vehicle asked him the location of the school canteen. When the man requested for a company, he agreed to go with him thinking that he was probably a new visitor. Upon reaching the back of the school canteen, which was the one facing the road, there were two cartons left. The man directly went to it and opened it. Less than a minute later, while he was walking back towards the terminal, the man suddenly handcuffed him without any explanation. Knowing that there were people inside the canteen, he attempted to shout but the man pointed a gun to his

mouth. He was then directed to board the vehicle. When he questioned them, they replied that maybe the cartons were his baggages. Despite saying that he did not know anything and that he did not own them, they insisted and did not believe him. He asked what were the contents of the cartons and they answered that they contained marijuana. He reiterated that he did not know anything about them. They then went to Kibungan Police Station where he was made to sit down and stay for thirty (30) minutes while the alleged marijuana bricks were left inside the vehicle. They then proceeded to Camp Dangwa, where they arrived at around 8:00 a.m. There, he was made to sit in a small room for about seven (7) hours. By 4:00 p.m., they let him out and brought him to their office where he noticed marijuana bricks on the table. They asked him to go near them for a photo shoot. He saw some persons around, but did not know their names. He did not recall if somebody asked him to sign any document or paper. The Inventory of Seized Items was never shown to him. He did not recall that Arty. Suaking, Fortuny or Kag. Tero were introduced to him.

RTC Ruling

On February 28, 2012, the RTC found Belban guilty of the crime charged and sentenced him to suffer the penalty of life imprisonment and to pay a fine in the amount of Five Hundred Thousand Pesos (P500,000.00). In ruling that the prosecution evidence proved with moral certainty that the sale of marijuana bricks was consummated, the trial court opined:

x x x [T]he **commission of the offense of illegal sale of dangerous drugs merely requires the consummation of the selling transaction, which happens the moment the buyer receives the drug from the seller.** As long as the police officer went through the operation as a buyer, whose offer was accepted by appellant, followed by the delivery of the dangerous drugs to the former, **the crime is already consummated.**

Were these elements established? The court answers in the positive. PDEA Agent Chumanao testified that he was the designated poseur-buyer who made the arrangements with the seller for the purchase of thirty bricks of dried marijuana. The date and place of the sale was agreed upon with the further agreement that it would be the buyer who would go to the agreed place to pick up the marijuana bricks. Thus[,] on February 4, 2009, the team of Agent Chumanao found its way to Kibungan, Benguet to meet with the seller and pick up the marijuana bricks. True enough, the seller met them at the designated place and led them to the object of the sale. Satisfied that the object was indeed marijuana bricks, poseur-buyer Agent Chumanao parted with the purchase price. Once the purchase price was in the hands of the seller, the poseur-buyer effected the arrest. x x x.^[8]

It was also held that the chain of custody of the seized marijuana bricks had been unbroken:

In the case at bar, the prosecution evidence shows that right after the arrest of the accused the two boxes containing the marijuana bricks were loaded into the vehicle. Right there and then Agent Chumanao marked

the bricks with his initials "BCC" and indicated the date and time of seizure on all the bricks in the presence of the accused. Considering that it was still dark and the place was quite isolated, the team left the place and went back to their office. The marijuana bricks were turned over to the PDEA Evidence Custodian SPO4 Romeo Abordo.

Upon receipt of the marijuana bricks that morning of February 4, 2009, SPO4 Abordo conducted the inventory. The marijuana bricks were laid out on the: table and all the bricks bore the initials of the poseur-buyer. Witnessing the inventory were the accused, Prosecutor Winston Suaking, Barangay Kagawad Ponciano N. Tero and media member Manny Fortuny. The prosecution evidence also consists of pictures taken during the inventory.

There is no doubt then that the inventory required by law has been conducted in the presence of all those required by law to be present. Further, the inventory has been documented.

The seized items were then brought to the Crime Laboratory and Forensic Chemist PSI Rowena Canlas testified that what she received were thirty bricks of marijuana all with the markings "BCC", the date "02/04/09" and a signature. She compared the items she received with the description on the letter-request for examination and they were exactly the same.

After her examination, she turned over the marijuana bricks to the Crime Laboratory Evidence Custodian. The evidence custodian, PO1 Dennis delos Reyes brought the marijuana bricks to court and the court saw for itself the markings made by the poseur-buyer and the forensic chemist. Also, in his testimony, the poseur-buyer Agent Churnanao identified the marijuana bricks brought by PO1 Delos Reyes as the same items he seized from the accused. In the same vein, Forensic Chemist Canlas identified the same items as the one turned over to her by the PDEA Evidence Custodian and which she subjected to laboratory examination.

Clearly then the marijuana bricks seized from the accused were the same marijuana bricks brought to court. The chain of custody of the illegal drugs has not been compromised.^[9]

CA Ruling

On appeal, the CA sustained Belban's conviction. After adopting the narration of facts of the RTC, it concluded that all the elements of the crime were established beyond reasonable doubt. The appellate court noted that the testimony of Chumanao was corroborated by Mosing and Asiong in material points. Add to this the fact that all of them executed an affidavit relative to the buy-bust operation and identified Belban in open court. Further, the presumption of regularity in the performance of official duties was not successfully disputed because no improper motive on the part of police authorities was proven. Finally, as to compliance with Section 21, Article II of R.A. No. 9165, the CA held that, based on the testimonial and documentary evidence of the prosecution and contrary to the unsubstantiated claim of Belban, there was no gap in the chain of custody of the seized marijuana. For the appellate court, minor discrepancies in the testimonies and inconsistencies