

EIGHTEENTH DIVISION

[CA-G.R. CR. No. 01836, July 31, 2014]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. BRYAN
TE-ENGPO, ACCUSED-APPELLANT.**

D E C I S I O N

INGLES, G. T., J.:

THE CASE

On appeal are the Judgment^[1] dated 9 December 2011 of the Regional Trial Court, of Negros Oriental, 7th Judicial Region, Branch 42, Dumaguete City rendered in Crim. Case No. 2010-19802 convicting accused-appellant guilty beyond reasonable doubt of Robbery with Force Upon Things and its Order^[2] dated 15 December 2011 amending the dispositive portion thereof, *viz* -

"WHEREFORE, judgment is rendered finding accused Bryan Te-engpo guilty beyond reasonable doubt of the crime of robbery defined under paragraph 5 of Article 294 of the Revised Penal Code. He is hereby sentenced to suffer the indeterminate prison term of four (4) months and one (1) day of *arresto mayor* as minimum to six years and one (1) day of *prision mayor* as maximum. He is also ordered to restore to the Dauin National High School the following items: 3 microscopes Unicon brand Model GE-29, twelve (12) 2.50 ml., three (3) glass covers and nine (9) dissecting sets.

For insufficiency of evidence, accused Felix Balilo, Jr. is hereby acquitted. He is hereby ordered released from custody at the NODRC, Dumaguete City, unless detained for any other lawful cause.

SO ORDERED."

THE FACTS

On 20 August 2009, an Information^[3] was filed against Felix Balilo, Jr., Eddie Flores and Bryan Te-engpo alias "Bryan", the accusatory charge of which reads,

"That on or about 10th day of September 2008, in the Municipality of Dauin, Negros Oriental, Philippines and within the jurisdiction of this Honorable Court, the said accused, conspiring and confederating together and helping one another, did, then and there willfully, unlawfully, feloniously, with intent to gain, and by means of force upon things, to wit: by then removing two (2) sets of window glass at back portion of the classroom of Dauin National High School or through an opening not intended for entrance or egress, take, steal and carry away the following:

1. eight (8) compound microscope
2. nine (9) dissecting set
3. twelve (12) 250 ml beakers
4. three (3) cover glass
5. one (1) fire extinguisher

all items belonging to the Dauin National High School, against their will, all value at Php17,753.39, to the damage and prejudice of said owner in the aforesaid sum of Php17,753.39, Philippine currency (sic)."

[The case was docketed as Crim. Case No. 2009-19658.^[4]]

Warrants of Arrest both dated 22 January 2010 were issued commanding the arrest of Felix Balilo, Jr.^[5] and Eddie Flores and Bryan Te-engpo.^[6]

By Order^[7] dated 11 February 2010, the trial court released accused Bryan Te-engpo after posting bail.

The prosecution moved^[8] to amend the Information to add the words "entered the classroom and once inside, did then and there". Thus, the amended Information^[9] reads,

"That on or about 10th day of September 2009 (sic), in the Municipality of Dauin, Negros Oriental, Philippines, and within the jurisdiction of this Honorable Court, the said accused conspiring and confederating together and helping one another, did, then and there willfully, unlawfully, feloniously, with intent to gain, and by means of force upon things, to wit: by then removing two (2) sets of window glass at back portion of a classroom of Dauin National High School or through an opening not intended for entrance or egress, entered the classroom and once inside, did then and there take, steal and carry away the following:
(Underscoring supplied)

1. eight (8) compound microscope
2. nine (9) dissecting set
3. twelve (12) 250 ml beakers
4. three (3) cover glass
5. one (1) fire extinguisher

all items belonging to the Dauin National High School, all valued at Php17,753.39 [sic], to the damage and prejudice of the owner in the aforesaid sum of Php17,753.39, Philippine currency (sic)."

By Order^[10] dated 22 February 2010, the trial court directed the District Warden of Siaton to turn-over accused Felix Balilo, Jr. to the Negros Oriental Detention and Rehabilitation Center (NODRC) in Dumaguete City.

By Order^[11] dated 25 February 2010, the trial court admitted the amended Information.

Upon arraignment, the accused Bryan Te-engpo^[12] and Felix Balilo, Jr.^[13] pleaded not guilty to the charge against them.

Accused Eddie Teves Flores was reported to have died^[14] already.

In the Order^[15] of the trial court dated 18 February 2011, it is reflected therein that the prosecution presented a copy of the death certificate of Jessie Mendoza.

After the issues have been joined and the pre-trial terminated, trial on the merits ensued.

Accused Felix Balilo, Jr., thru counsel, filed a Demurrer to Evidence,^[16] which was denied by the trial court for having been filed out of time in its Order^[17] dated 19 May 2011.

As culled by the trial court, the facts of the case are the following,

"Evidence for the Prosecution

At about 8:30 o'clock in the evening of September 10, 2008, a report was made to the PNP Dauin Station by one Joventino Abejero, a police auxiliary assigned at the Dauin National High School, that there was an unauthorized entry or break-in in one of the classrooms, which he discovered was ransacked. The report was immediately entered in the police blotter. In response to the report, SPO2 Galileo Macalipay Quio, Sr. proceeded to the place of the incident to conduct an ocular inspection. According to Mrs. Carmelita Alcala, the officer-in-charge of the High School, who was present during the inspection, they discovered that two glass blades were removed from the jalousie window of the laboratory room, which probably explained how the perpetrators gained entrance. Inside the laboratory everything was in disarray. The cabinet containing laboratory equipment like microscopes, beakers – was forcibly opened. An inventory conducted the following day revealed that the following laboratory equipment were stolen: eight (8) microscopes Unicon Brand Model GE-29, one (1) fire extinguisher, twelve (12) 2.50 ml. beakers, three (3) glass covers and nine (9) dissecting sets. Of these stolen items, the following were recovered: 5 microscopes – four from different buyers and one which was left near the school grounds and fire extinguisher surrendered by Dr. Augustus Santillan, who also purchased one microscope.

The fact of ownership of these things which were stolen was established through the testimonies, not only of Mrs. Carmelita Alcala, the officer-in-charge of the school, but also by property custodian, Mrs. Lorenza Trumata who identified the microscopes. Copies of documents indicating the Delivery Receipts of this laboratory equipment from its supplier, the certificate of acceptance by the Dauin National High School, as well as the authority of Mrs. Carmelita Alcala, were also presented in evidence.

During a follow-up operations conducted by elements of the PNP Dauin, they were able to recover four (4) microscopes from different buyers here in Dumaguete City. SPO4 Romulus Delfin, they visited laboratories and clinics in Dumaguete City to make inquiries if perchance somebody

offered to sell them microscopes. Luckily, their investigation yielded positive results, leading to the recover[y] of the four microscopes.

On September 15, 2008, SPO4 Romulus Delfin, together with SPO4 Alcala and SPO3 Galileo Quio, first went to the Dumaguete City Medical Cooperative where they learned that a person, described as 'one with a long hair and burnt scars in the face' had offered to sell a microscope to them. However, they were advised just to come back, as their manager was not around. Afterwards, they proceeded to the PNP Station of Dumaguete City to review the pictures on the rogue gallery, but could not find the suspect as described. Upon the advice of some policemen from Dumaguete that the person they are looking may be the one in Tinago, Dumaguete City, they proceeded to the place. On their way, they stopped by a clinic owned by one Dr. Augustus Santillan, whom they were able to ask the same query if he received offers to a microscope. Dr. Santillan admitted that his neighbor, Bryan Te-engpo sold to him one microscope for P500.00, and even called Bryan Te-engpo. Moments later, a person, identified as Bryan Te-engpo arrived at the residence of Dr. Santillan and during their conversation, SPO4 Delfin and his companions heard Bryan admit that it was Felix Balilio (sic), Jr., who had asked him to sell that microscope. Apart from the microscope he purchased from Bryan Te-engpo, Dr. Santillan also surrendered to the police the fire extinguisher.

Jessie Mend[eza] whose store is just in front of the residence of Bryan Te-engpo, also voluntarily returned one microscope to the policemen from Dauin.

It was also Bryan Te-engpo who relayed the information to the police that one more microscope was sold by Eddie Flores to a public school teacher from West City Elementary School in Dumaguete City. In the course of their investigation, the policemen were able to speak with Eddie Flores who confirmed to them that he sold one microscope to Mr. Steve Teves. Later, the police recovered a microscope from Mr. Steve Teves, the teacher from the West City Elementary School, who admitted that it was Eddie Flores who sold it to him for P1,500.00. According to SPO2 Quio and SPO3 Delfin, both Bryan Te-engpo and Eddie Flores told them that they were only asked by Felix Balilio (sic), Jr. to sell the microscopes, which they had sold to the different buyers.

With respect to the microscope recovered from the Negros Oriental Hospital Cooperative, also referred to by the police as Dumaguete City Medical Cooperative, its manager, Cesar Miranda testified it was Bryan Te-engpo who sold to him the microscope. According to him, Bryan Te-engpo explained that the microscope belonged to his friend, who was formerly enrolled in a medical course, but who had since stopped schooling and didn't need it anymore. From what was related by Bryan Te-engpo, this microscope of his friend was given by the latter's aunt who is abroad. Cesar Miranda also clarified that he bought the microscope for P1,500.00 not for the cooperative, but for his nephew who was engaged in the cell phone repair business.

All four buyers of the microscopes: Dr. Augustus Santillan, Dumaguete

Medical Cooperative through its manager, Cesar Miranda, Steve Teves and Jessie Mendoza turned over the possession of the microscopes they purchased from Bryan Te-engpo and Eddie Flores to the (sic) SPO2 Galilio Quio, as shown by the receipts issued by the latter. These microscopes recovered by the police from the different buyers were also presented in evidence. In the course of their testimonies, SPO4 Delfin and SPO2 Quio pointed to accused Bryan Te-engpo as the person who Dr. Santillan identified as the one who sold the microscope to him. Cesar Miranda also identified accused Bryan Te-engpo as the person who sold the microscope to him. Cesar Miranda also identified accused Bryan Te-engpo as the person who sold the microscope to the Medical Cooperative."

"Evidence for the Defense

On the part of the accused Felix Balilo (sic), Jr., he denied the charge and claimed that he was nowhere in the vicinity of the school when the alleged robbery took place, as he was just at his residence busy preparing food for their fiesta celebration, and later, entertaining their guests, as that day, September 10, was the town fiesta of Dauin. He denied knowing co-accused Bryan Te-engpo, claiming that he only met him in court when this case was filed. With regard to Eddie Flores, accused also maintains that he does not know him. The story of the accused was corroborated by his father, Felix Balilo, Sr., who also testified in court that his son was just at their residence on that day of the alleged robbery, preparing food and later entertaining their guests.

Co-accused Bryan Te-engpo also insisted that he was innocent of the charges and that at the time of the alleged robbery on September 10, 2008, he was just in Dumaguete City. He related that while he had wanted to go to Dauin that day as it was a town fiesta, however, he was unable to do so for lack of transportation. In the course of his cross-examination, he confirmed going to the house of Dr. Augustus Santillan, where he was able to talk with some policemen. Nonetheless, due to the vigorous objection of his counsel, he was unable to explain what took place at the residence of Dr. Santillan, nor refute the claim of the prosecution witnesses regarding his admission of having sold a microscope to Dr. Santillan.

The grandmother of Bryan Te-engpo corroborated his alibi. She testified that Bryan Te-engpo was at school on September 10, 2008, and in fact just came back for lunch, but left for school again in the afternoon."

THE RULING OF THE REGIONAL TRIAL COURT

In convicting accused Bryan Te-engpo and acquitting accused Felix Balilo, Jr., the trial court ratiocinated,

"From the foregoing evidences, it was established that there was unlawful taking of these personal properties, belonging to Dauin National High School, without the knowledge and consent of its owners, and that that (sic) unlawful taking was accomplished with the use of force upon things. In other words, with the exception of *animus lucrandi*, all the