

SPECIAL TWENTIETH DIVISION

[CA-G.R. CEB CR NO. 01983, July 24, 2014]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
JEFFERSON BRAVO CRUZ, ACCUSED-APPELLANT.**

D E C I S I O N

QUIJANO-PADILLA, J.:

This is an appeal from the Judgment^[1] dated July 23, 2012, of the Regional Trial Court, 7th Judicial Region, Branch 30, Dumaguete City convicting beyond reasonable doubt herein accused-appellant Jefferson Bravo Cruz, in Criminal Case No. 19793 for possession of *marijuana*, an illegal drug, in violation of Section 11, Article II, of R.A. 9165 or the Comprehensive Dangerous Drugs Act of 2002.

The Facts

On December 28, 2009, accused-appellant Jefferson Bravo Cruz [Cruz] was charged for violation of Section 11, Article II of R.A. 9165 or the Comprehensive Dangerous Drugs Act of 2002. The Information^[2] reads:

“That on or about the 25th day of December, 2009 in the City of Dumaguete, Philippines, and within the jurisdiction of this Honorable Court, the said accused, not being then authorized by law, did then and there willfully, unlawfully and feloniously possess, keep and have under his control two (2) sticks of handrolled cigarette containing 0.29 gram and 0.36 gram of *marijuana* leaves, a dangerous drug.

Contrary to Section 11, Article II, R.A. 9165.”

Upon his arraignment, on January 11, 2010, Cruz with the assistance of his counsel, Atty. Araula pleaded not guilty to the offense charged.^[3]

The defense agreed to stipulate on the facts with regard to the gist of the testimony of Forensic Chemist Josephine S. Llena, OIC of the Negros Oriental Provincial Crime Laboratory Office, as the one who personally received from PO3 Gonzaga on December 25, 2009 at 7:30 o'clock in the evening two [2] sticks of *marijuana* cigarette marked as JBC-P1-12-25-09 and JBC-P-2-12-25-09, respectively and after the laboratory examination on the specimens gave positive results to the tests for *marijuana*. That she is the same person who prepared Chemistry Report No. D-111-09^[4] and that prior to her delivery of the specimens before the RTC, she kept the same in the evidence vault of their crime laboratory and that the RTC received the same on January 6, 2010.^[5]

Likewise defense stipulated that the testimonies of Juditho Fabillar, a media

practitioner; Ramonito Astillero, an employee of the City Prosecution's Office, Dumaguete City; Gemma Villaflores, the Barangay Kagawad of Barangay Calindagan, Dumaguete City and Marie Germodo, who was connected with the Philippine Drug Enforcement Agency [PDEA], be dispensed with.^[6]

After the conclusion of the pre-trial^[7] on April 23, 2010, trial on the merits proceeded.

VERSION OF THE PROSECUTION

Prosecution presented the arresting officers: SPO1 Orlando Elli Gonzaga (then PO3 Gonzaga) and PO3 Derek T. Alcoran (then PO2 Alcoran) who established, that:

On December 25, 2009, SPO1 Gonzaga and PO3 Alcoran were conducting a mobile visibility and detective patrol within Dumaguete City when they were called in through a radio message from the Desk Investigator of Dumaguete Police Station, SPO3 Macasilhig in order to render assistance to a swindling victim.^[8]

When they arrived at the police station, they met the victim, Desirita C. Dales [Dales] who was then accompanied by Barangay Councilor, Gregorio Sarita Oira. Dales reported to them that she was recently scammed into giving a certain Genelyn Cabalag P2,500.00 in order to join the "*labahan challenge*" of ACS Manufacturing, the maker of Pride Detergent. She was told that she would surely win "*kabuhayan showcase*" worth P70,000.00 and a chance to win as TV product endorser.^[9]

On December 25, 2009, Dales received a phone call from an unidentified male person representing himself to be the supervisor of ACS Manufacturing Corporation, informing her that she won as the Ariel's product endorser and that she should pay them P2,300.00 before 7:00 pm on that day, in order to finalize the contract.^[10] After ascertaining that there was no such promotional activities from ACS Manufacturing, she believed that she was already scammed. Suspecting that she will be meeting another one of the swindlers, she then reported the matter to the police.

The police planned an entrapment operation against the male person who called Dales. They prepared the marked money provided by the complainant and recorded the serial numbers in the blotter.

Dales and this male person agreed to meet at *Mang Inasal* fastfood restaurant inside Robinson's Place, Dumaguete City and the pre-arranged signal for the police officers to effect the arrest would be when Dales would hand the marked money to the swindler.^[11]

After strategically placing themselves inside Mang Insal fastfood posing as customers, the police officers waited for a while until 4:30 p.m. struck and a male person approached Dales. After they conversed and Dales handed him the money SPO1 Gonzaga arrested the male person for the crime of *estafa* who was later identified as accused-appellant Jefferson Bravo Cruz.

While PO3 Alcoran conducted a body search on Cruz, he recovered from the latter's right hand the marked money.^[12] Further, PO3 Alcoran found inside the black wallet

of Cruz two [2] pieces of handrolled cigarette suspected to be *marijuana* which he immediately turned over to SPO1 Gonzaga who was a touching distance away from him as he was still busy conducting a search on Cruz. SPO1 Gonzaga immediately marked the contraband as "JBC-P1-12-25-09" and "JBC-P2-12-25-09", respectively. [13]

When the arresting officers were about to conduct a physical inventory, they discovered that they were not able to bring the forms thereof and that one of the staff of the establishment complained about the disorder brought about by the commotion, [14] so that they decided to continue the physical inventory at the police station. [15]

At the police station, PO3 Alcoran conducted the inventory of the items seized from Cruz, and witnesses from PDEA, DOJ, media and *barangay* officials were present. Then SPO1 Gonzaga prepared the Certificate of Inventory [16] dated December 25, 2009 and likewise took pictures of the proceedings. [17]

SPO1 Gonzaga delivered the contraband at the PNP Crime Laboratory together with the letter request [18] which was personally received by PCI Josephine S. Llana. [19]

The specimens marked "JBC-P1-12-25-09" and "JBC-P2-12-25-09" when subjected to chemical analysis yielded positive results for the presence of *marijuana*, a dangerous drug.

After the conclusion of the testimonies of the prosecution witnesses, Exhibits "A" to "H" [20] were offered with their sub-markings, which were duly admitted [21] by the RTC.

VERSION OF THE DEFENSE

Defense presented accused-appellant himself.

Accused-appellant Cruz in denying the charge against him testified that a certain Michael Santos was looking for someone who would promote Pride, a laundry detergent. He jumped at the opportunity because his common-law wife and him were expecting their third child. [22]

Michael Santos told him that he would be assigned in Dumaguete City, so on December 22, 2009 they boarded a boat and sailed from Malabon City, Manila to Dumaguete City. They arrived in Dumaguete on December 24, 2009 and stayed in a lodge near a cockpit. Michael Santos then instructed him to go to Robinson's and wait for him there.

When he arrived at Robinson's he roamed for a while and decided to take a seat at Mang Inasal's when he was suddenly held by two [2] unidentified persons. When he asked the persons why they were holding him the latter identified themselves as police officers and that they were arresting him in connection with a "*budol-budol*" complaint. [23]

After placing him under arrest, he was not read his rights and was immediately

brought to the police station. It was only on December 26, 2009 that he knew that he was charged with drugs and asked his fellow prisoners what drugs were all about.^[24]

No documentary evidence was presented by the defense.

On July 23, 2012, the RTC convicted accused-appellant Cruz for Violation of Section 11, Article II of RA 9165, the dispositive portion of the decision, reads:

"WHEREFORE, in light of the foregoing, the Court hereby finds the accused Jefferson Bravo Cruz GUILTY beyond reasonable doubt of the offense of illegal possession of two (2) sticks of hand rolled cigarette containing 0.29 gram and 0.36 gram of dried *marijuana* leaves, a dangerous drug, in violation of Section 11, Article II of RA 9165 and is hereby sentenced to suffer an indeterminate penalty of twelve (12) years and one (1) day as minimum term to fourteen (14) years as maximum term and to pay a fine of Four Hundred Thousand Pesos (P400,000.00).

The two (2) sticks of hand rolled cigarette containing 0.29 gram and 0.36 gram of dried *marijuana* leaves are hereby confiscated and forfeited in favor of the government and to be disposed of in accordance with law.

In the service of sentence, the accused Jefferson Bravo Cruz shall be credited with the full time during which he has undergone preventive imprisonment, provided he agrees voluntarily in writing to abide by the same disciplinary rules imposed upon convicted prisoners.

SO ORDERED."^[25]

From the adverse decision, accused-appellant Cruz, appealed to Us, with the following assignment of errors:

"I. THE TRIAL COURT GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY OF POSSESSING ILLEGAL DRUGS DESPITE THE SERIOUS GAPS IN THE CHAIN OF CUSTODY OF THE *CORPUS DELICTI* OF THE CRIME COMPROMISING ITS INTEGRITY AND IDENTITY;

II. THE TRIAL COURT ERRED IN FINDING THAT ACCUSED-APPELLANT GUILTY OF POSSESSION OF ILLEGAL DRUGS DESPITE THE FACT THAT THE POLICE OFFICERS VIOLATED SECTION 21, OF R.A. 9165; AND

III. THE TRIAL COURT GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY OF POSSESSING ILLEGAL DRUGS DESPITE THE INADMISSIBILITY OF THE EVIDENCE AGAINST HIM FOR HAVING BEEN OBTAINED UNDER AN INVALID WARRANTLESS ARREST IN VIOLATION OF HIS CONSTITUTIONAL RIGHTS."^[26]

Our Ruling

Accused-appellant Cruz asserts that the police officer who allegedly seized the illegal drug from him was PO3 Alcoran but the said police officer was never made to identify the two [2] sticks of *marijuana* thereby creating a serious gap in the chain

of custody of the *corpus delicti*.^[27] Another gap was created when there were conflicting testimonies as to where the two [2] sticks *marijuana* were marked, SPO1 Gonzaga stated it was at the scene of the crime while PO3 Alcoran said it was at the police station.^[28] Cruz clarifies that the issue is not where the two [2] sticks were marked but rather why was there an inconsistency in the first place.^[29]

Another thing, based on the photographs presented, there appears to be different sets of *marijuana* that was subjected to a photograph. In Exhibit "F-2" there depicts two *marijuana* sticks with some kind of masking tape on it yet Exhibits "F-1", "F-3" and "F-4" shows two [2] *marijuana* sticks without some kind of masking tape evidently showing that there were different items that were being photographed in front of different persons.^[30]

Lastly, accused-appellant Cruz questions the validity of his arrest. For failure of the prosecution to establish the fact of swindling and for their failure to present the victim thereto his subsequent arrest was therefore illegal.^[31]

Accused-appellant's conviction stands.

Accused-appellant Cruz was arrested pursuant to an entrapment operation conducted on December 25, 2009 at around 4:30 o'clock in the afternoon at Mang Inasal fastfood restaurant at Robinson's, Dumaguete City for the crime of *estafa*. After he was read his Miranda rights,^[32] PO3 Alcoran searched his person and he was found in possession of two [2] sticks of *marijuana* an illegal drug. Inevitably, the recovery of the contraband was incidental to his lawful arrest. His arrest being valid, he may be searched for dangerous weapons or anything which may have been used or constitute proof in the commission of an offense without a search warrant pursuant to Section 13, Rule 126^[33] of the Rules of Court.

For the successful prosecution of illegal possession of dangerous drugs, like *marijuana*, the following essential elements must be established: (a) the accused is in possession of an item or object that is identified to be a prohibited or dangerous drug; (b) such possession is not authorized by law; and (c) the accused freely and consciously possessed the drug.^[34]

We find that the prosecution established beyond reasonable doubt the presence of all the foregoing elements.

It must be noted that possession of dangerous drugs constitutes prima facie evidence of knowledge or *animus possidendi*, which is sufficient to convict him, unless there is a satisfactory explanation of such possession. The burden of evidence is, thus, shifted to Cruz to explain the absence of knowledge or *animus possidendi*. In this case, the illegal possession came about when Cruz was incidentally searched after his lawful arrest.^[35] The following narration of SPO1 Gonzaga shows Cruz's wilful possession of illegal drugs:

"Q: Why did you go to Robinson's place?

A: Because that was the arranged place between the complainant and the male person who called her, sir.