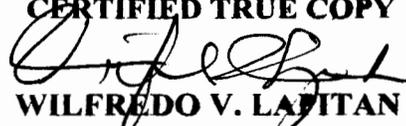




Republic of the Philippines
 Supreme Court
 Manila

CERTIFIED TRUE COPY

 WILFREDO V. LAPIDAN
 Division Clerk of Court
 Third Division

FEB 19 2016

THIRD DIVISION

PEOPLE OF THE PHILIPPINES,
 Plaintiff-Appellee,

G.R. No. 206224

Present:

VELASCO, JR., J., *Chairperson,*
 BRION,*
 PERALTA,
 PEREZ, and
 REYES, JJ.

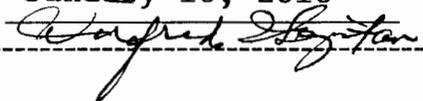
- versus -

Promulgated:

JUAN ASISLO y MATIO,
 Accused-Appellant.

January 18, 2016

X-----

 X

DECISION

PERALTA, J.:

Before Us is a Notice of Appeal assailing the Decision¹ dated June 1, 2012 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 04081, which affirmed the Decision² dated July 21, 2009 of the Regional Trial Court (RTC), Branch 61, Baguio City, finding the accused-appellant Juan Asislo y Matio guilty of illegal sale of marijuana, a dangerous drug, in violation of Section 5 of Republic Act (R.A.) No. 9165, otherwise known as the *Comprehensive Dangerous Drugs Act of 2002*.

* Designated Additional Member in lieu of Associate Justice Francis H. Jardeleza, per Raffle dated October 1, 2014.

¹ Penned by Associate Justice Danton Q. Bueser, with Associate Justices Rosmari D. Carandang and Ricardo R. Rosario, concurring, *rollo*, pp. 2-15.

² Penned by Presiding Judge Antonio C. Reyes, CA *rollo*, pp. 34-41.



On May 14, 2008, accused-appellant Asislo, Jose Astudillo, and Samuel Pal-iwen were similarly charged with the violation of Section 5 of R.A. No. 9165, to wit:

That on or about the 13th day of May, 2008 in the City of Baguio, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually aiding one another, did then and there, willfully, unlawfully and feloniously deliver and transport NINETY-ONE (91) BRICKS and TWO (2) TUBE TYPE OF DRIED MARIJUANA LEAVES, a dangerous drug, in different sizes, thickness, and weight, weighing a total of ONE HUNDRED TEN (110) KILOGRAMS, to PDEA undercover agents, knowing fully well that said “marijuana dried leaves” are dangerous drugs, in violation of the abovementioned provision of law.³

During the arraignment, all of the accused entered a plea of not guilty. Thereafter, the trial on the merits ensued.

As found by the trial court, the prosecution presented the following version of the events leading to the arrest of all the accused:

Sometime in the second week of April 2008, the Philippine Drug Enforcement Agency-Cordillera Administrative Region (*PDEA-CAR*) Office received intelligence information from PDEA-La Union about the proliferation and distribution of marijuana in La Union, and the same revealed that the accused Juan Asislo had delivered a huge volume of marijuana in Baguio City to an unidentified buyer sometime in the first week of April 2008. Regional Director PCI Edgar S. Apalla directed IA1 Ferdinand Natividad to coordinate and communicate with PDEA-La Union to build a case against Asislo.⁴

In the third week of April 2008, the confidential informant, “Jojo”, arrived at the Office of PDEA-CAR in Baguio City and introduced himself. Natividad instructed him to continue dealing with Asislo, and to inform them of any developments regarding Asislo’s alleged illicit activities. On April 28, 2008, Jojo reported that he met Asislo along with his unidentified companions. Asislo asked him to look for a buyer of the 300 kilos of marijuana in exchange for a commission. Natividad ordered Jojo to inform Asislo that a buyer from Manila was interested to purchase 200 kilos of marijuana.⁵



³ *Id.* at 34.

⁴ *Id.*

⁵ *Id.* at 35.

On May 2, 2008, Jojo reported that Asislo disclosed that the prevailing price of marijuana was ₱1,500.00 per kilo. Per Natividad's instruction, Jojo apprised Asislo that the buyer from Manila who was willing to buy 200 kilos of marijuana will be in Baguio for a vacation. In a phone call, Asislo insisted in talking with the buyer. Natividad talked with him through the phone and reiterated to him his interest to buy 200 kilos of dried marijuana leaves. However, Asislo notified him that he only had around 100 kilos of marijuana leaves. Natividad settled with Asislo, and asked the latter to wait for his call for the delivery of the marijuana.⁶

On May 8, 2008, Asislo called Natividad that they were prepared to deliver about 110 kilos of marijuana on May 13, 2008. Upon learning the negotiations of Natividad with Asislo, PCI Apalla formed the team for the entrapment operation composing of Natividad as the poseur-buyer, SPO4 Romeo Abordo as the team leader, and SPO2 Cabily Agbayani and SPO1 Emerson Lingbawan as the members of the back-up team and arresting officers.⁷

In the evening of May 12, 2008, they agreed to have their transaction within the vicinity of Dontogan, Green Valley, Baguio City, near a certain "car wash" area between 7 o'clock and 8 o'clock in the morning on May 13, 2008.⁸

Around 5 o'clock in the morning on May 13, 2008, the entrapment and arresting team proceeded to the area. Asislo related to Natividad that he was with other four individuals on board a dark blue Kia Besta van with plate number XFC 682. At 7:30 in the morning, the Besta van stopped at about 30 meters from the agreed place of transaction. Two men alighted from the vehicle and approached Natividad. One of them was Jojo, who then introduced the other as Asislo. Natividad asked Asislo to see the marijuana before he pays. Thereafter, Asislo ordered the van's driver, Jose Astudillo, to open the compartment. Natividad saw five sacks and a plastic bag. Asislo asked his other companion, Samuel Pal-iwen, to help him pull out one sack and opened the same in front of Natividad. The sack was loaded with bricks of marijuana.⁹

Natividad removed his ball cap, their pre-arranged signal, and held Asislo in a tight embrace. He removed his service firearm and introduced himself as a PDEA agent. The back-up team rushed to the scene and arrested the other accused. SPO2 Agbayani recited to Asislo and his companions

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.* at 35-36.

their constitutional rights. SPO1 Lingbawan searched the van, and found four sacks containing bricks of marijuana and a plastic bag with two pieces of tube type of marijuana leaves inside. SPO4 Abordo seized Asislo's cell phone. The van used in transporting the marijuana was impounded at the PDEA-CAR Office.¹⁰

Because of the volume of the confiscated dangerous drugs, the team brought the sacks of marijuana to the PDEA-CAR Field Office for proper markings and documentations. Thereafter, the drugs were turned over to the Philippine National Police (PNP) Crime Laboratory Office at Camp Bado Dangwa, La Trinidad, Benguet for chemical analysis. Asislo and his two companions were subjected to urine examination, which yielded negative results, at the PNP Laboratory Office.¹¹

On the other hand, the version of the defense is as follows:

At about 4 o'clock in the afternoon on May 11, 2008, Astudillo, after a day's work of driving a passenger jeepney, was watching a billiards game inside a building at the jeepney station at Sasaba, Santol, La Union. The store where the other accused, Asislo and Pal-iwen, worked as broom makers was also in the same building.¹²

Around that time, Astudillo saw Jojo conversing with Asislo. While busy making brooms, Pal-iwen was nearby and within hearing distance. Astudillo heard Jojo inquiring about anyone who leases any closed vehicle for transportation of brooms and bananas. Asislo suggested one Jimmy Tad-o. He accompanied Asislo and Jojo when they proceeded to Tad-o's place. After reaching an agreement, Tad-o asked Astudillo to travel with Asislo and to return the vehicle at Sasaba.¹³

Around 1 o'clock in the morning on May 13, 2008, Pal-iwen saw Jojo and some companions load brooms and sacks in the van. With Pal-iwen and Asislo, Jojo drove the van bound for Baguio City. Jojo unloaded the brooms and bananas at the San Fernando City Market. Then, Astudillo showed up after Asislo called him on the cell phone.

Astudillo then drove the van to Dontogan, Green Valley, Baguio City. Upon arrival, Asislo and Jojo alighted from the van and proceeded to the construction site of Asislo's uncle for coffee. The PDEA agents suddenly

¹⁰ *Id.* at 36.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*



arrived and arrested them. They were brought to the PDEA-CAR Office at the Melvin Jones, Burnham Park, Baguio City where they were accused of delivering marijuana.

On July 21, 2009, the Baguio City RTC convicted Asislo of the crime of illegal sale, while it acquitted Astudillo and Pal-iwen due to insufficiency of evidence against them and the failure of prosecution to establish conspiracy. In convicting accused-appellant Asislo, the RTC ratiocinated that the sale of illegal drugs, like any other sale, is perfected upon the meeting of the minds between the vendor and the vendee with respect to the subject matter and as regards the cause or consideration.¹⁴ The dispositive portion of the decision reads:

WHEREFORE, this Court renders judgment finding the accused Juan Asislo GUILTY beyond reasonable doubt and he is sentenced to suffer Life Imprisonment and to pay a fine of ₱5,000,000.00.

Accused Jose Astudillo and Samuel Pal-iwen are hereby ACQUITTED for insufficiency of evidence and they are ordered RELEASED from custody unless being held for some other lawful reasons which require their continued detention.

SO ORDERED.¹⁵

Accused-appellant Asislo, through the Public Attorney's Office, appealed before the CA arguing that the RTC erred in convicting him due to the lapses in the chain of custody of the seized dangerous drugs, and the failure of the prosecution to establish his guilt beyond reasonable doubt. The CA, in affirming the decision of the RTC, held that the presentation of the buy-bust money is not indispensable to the prosecution of a drug case.¹⁶ However, the CA reduced the fine to ₱1,000,000.00, the *fallo* of the decision reads:

WHEREFORE, in view of the foregoing, the Decision dated July 21, 2009 rendered by the Regional Trial Court of Baguio City, Branch 61, is, except for the amount of fine imposed which is REDUCED to One Million (₱1,000,000.00) Pesos, hereby AFFIRMED.

SO ORDERED.¹⁷

Aggrieved, accused-appellant Asislo now seeks his acquittal before this Court lamenting that the prosecution failed to establish an unbroken link

¹⁴ *Id.* at 37.

¹⁵ *Id.* at 41.

¹⁶ *Rollo*, p. 9.

¹⁷ *Id.* at 14-15.

in the chain of custody. He avers that the PDEA agents did not comply with the procedures mandated by Section 21 of R.A. No. 9165, since there was a lapse of time from the seizure of the illicit drugs to the marking and inventory. In his Supplemental Brief, Asislo maintains that the fact that it was only Natividad who marked the confiscated drugs casts a shadow of doubt to the authenticity of the evidence presented before the court.

The appeal lacks merit.

Section 21 (1), Article II of R.A. No. 9165 provides:

Sec. 21. Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment. — The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner: (1) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof;

Correlatively, Section 21 (a) of the Implementing Rules and Regulations (*IRR*) of R.A. No. 9165 provides:

(a) The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof; **Provided, that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; **Provided, further, that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items[.]****¹⁸

¹⁸

Emphasis supplied.

In many cases, this Court has held that “while the chain of custody should ideally be perfect, in reality it is not, as it is almost always impossible to obtain an unbroken chain.”¹⁹ Since the law itself provided exceptions to its requirements, the non-compliance with Section 21 of the IRR is not fatal and does not make the items seized inadmissible.²⁰ The most important factor is “the preservation of the integrity and the evidential value of the seized items as the same would be utilized in the determination of the guilt or innocence of the accused.”²¹

In the prosecution of a case for illegal sale of dangerous drugs, the primary consideration is to ensure that the identity and integrity of the seized drugs have been preserved from the time they were confiscated from the accused until their presentation as evidence in court.²² The prosecution must establish with moral certainty that the specimen submitted to the crime laboratory and found positive for dangerous drugs, and finally introduced in evidence against the accused was the same illegal drug that was confiscated from him.²³

The records of the case show that the authorities were able to preserve the integrity of the seized marijuana, and establish in the trial that the links in the chain of custody of the same were not compromised. While it is true that the drugs were not marked immediately after its seizure and not in the presence of the accused, the prosecution was able to prove, however, that the bricks of marijuana contained in five sacks and a plastic bag confiscated during the buy-bust operation were the same items presented and identified before the court.

After the seizure of the marijuana and the arrest of the accused, IA1 Natividad called PCI Apalla through mobile phone and reported the operation. Due to the volume of the confiscated drugs, PCI Apalla ordered IA1 Natividad and his companions to bring the sacks of marijuana to their field office for proper markings and documentations. Thereafter, IA1 Natividad, SPO2 Agbayani and SPO1 Lingbawan rode the Besta van with Asislo, Pal-iwen and Astudillo. IA1 Natividad stayed at the back of the van beside the confiscated drugs. Upon reaching the office, they placed the three accused in jail and then unloaded the five sacks and the plastic bag. Then, IA1 Natividad marked each of the sacks and on top of each brick with “Exhibit A,” his initials “FTN,” his signature and the date “5-13-08.” After the marking, the sacks were stored in their stockroom, which Natividad locked. He then prepared the documents such as the inventory of the items

¹⁹ *People v. Amy Dasigan y Oliva*, G.R. No. 206229, February 4, 2015.

²⁰ *People v. Efren Basal Cayas*, G.R. No. 215714, August 12, 2015.

²¹ *Id.*

²² *Id.*

²³ *Id.*



and the request for physical examination. In the afternoon of the same day, the authorities conducted an inventory of the seized drugs and photographed the same while witnessed by the assistant city prosecutor, an elected official and a member of the media. PCI Apalla requested for the physical examination of the three accused and for the laboratory examination of the drugs. The confiscated items were then turned over to the evidence custodian who then brought the same, together with the three accused, to Camp Dangwa for examination. The PNP Regional Crime Laboratory received the seized items at 4:30 in the afternoon of the same day.²⁴ After the examination, the submitted items tested positive for the presence of marijuana, as reflected in the Chemistry Report No. D-023-2008 prepared by Forensic Chemical Officer Edward Gayados.²⁵ The items were then submitted to the RTC for safekeeping.²⁶ Subsequently, IA1 Natividad identified in court the marked items as the one he seized from Asislo during the operation.

Although it was not specified who received the items in the laboratory in the testimony of the prosecution witnesses, the fact that the minute details of the seized items described in the chemistry report coincide with the specifications in the inventory prepared by the PDEA leaves no doubt that the bricks of marijuana received by the laboratory for examination were the same drugs seized by the PDEA agents from Asislo.

This Court, therefore, finds that the court *a quo* and the CA aptly held that the requirements under R.A. No. 9165 had been sufficiently complied with. The prosecution successfully established the unbroken chain of custody over the recovered marijuana, from the time the apprehending officers seized the drugs, to the time it was brought to the PDEA Office, then to the crime laboratory for testing, until the time the same was offered in evidence before the court.

The RTC, which the CA affirmed, convicted accused-appellant with the crime of illegal sale of dangerous drugs. Article II, Section 5 of R.A. No. 9165 provides:

SECTION 5. *Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals.* — The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (₱500,000.00) to Ten million pesos (₱10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall **sell, trade, administer, dispense, deliver, give away to another, distribute,**

²⁴ Records, pp. 53A-53F.

²⁵ *Id.*

²⁶ *Id.* at 149.

dispatch in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions.²⁷

The acts, such as deliver and sell, enumerated in the foregoing provision have been explicitly defined under Article I, Section 3 of the same statute, to wit.:

Section 3. *Definitions.* — As used in this Act, the following terms shall mean:

x x x x

(k) *Deliver.* — Any act of knowingly passing a dangerous drug to another, personally or otherwise, and by any means, with or without consideration.

x x x x

(ii) *Sell.* — Any act of giving away any dangerous drug and/or controlled precursor and essential chemical whether for money or any other consideration.

x x x x

A review of the allegations in the Information in Criminal Case No. 28307-R readily reveals that accused-appellant Asislo is charged with “delivery and transport” of marijuana although the Information charges the accused with violation of Section 5, R.A. No. 9165.

Accused-appellant Asislo could still be convicted for violation of Article II, Section 5 of R.A. No. 9165, because the evidence on record clearly establish “delivery and transport” although prosecution witness IA1 Natividad admitted, during the direct²⁸ and cross²⁹ examination, the lack of consideration/payment for the 110 kilograms of marijuana:

PROS. ESPINOSA:

Q: Mr. witness, you said that ₱1,500.00 per kilo?

A: Yes, ma'am.

Q: Did you prepare for marked money for the buying of [this] marijuana?

A: Actually we do not have that big amount of money, as an arrangement before our dispatch for that operation I will make a trick with the suspect Juan that I will first see the items before I will [hand] to him the money, ma'am.

²⁷

Emphasis supplied.

²⁸

TSN, September 9, 2008, pp. 27-28.

²⁹

TSN, September 10, 2008, pp. 20-21; 27.

Q: So you didn't prepare for any ₱1,500.00 money or fake money?

A: No, ma'am.

x x x x

Q: You mean you talk about the ₱150,000.00 only 3 hours before the operation?

A: Yes, ma'am.

Q: You did not [think] of that even the first meeting with the suspect of preparing the ₱1,500.00?

A: No, ma'am because this is only delivery.

ATTY. AWISAN:

Q: So this was a buy-bust operation, is that correct?

A: Actually, Sir.

Q: Did you prepare any buy-bust money for that operation?

A: Actually this is not purely a buy-bust operation[,] this is a mere delivery of item, Sir.

Q: And when you say delivery[,] how would you differentiate that from a buy-bust operation?

A: In a buy-bust operation[,] there is an exchange for [monetary] consideration between poseur-buyer and the suspect[,] whereas in delivery there is no monetary consideration but the items... the item was shown to the poseur-buyer there is no need to show him the supposed money, Sir.

x x x x

Q: But you mentioned earlier that the agreement between you and Juan was for the sale of marijuana at the price of ₱1,500.00 per kilo?

A: If they could not deliver the item if there is no monetary consideration, Sir.

Q: So actually there is a buy-bust operation?

A: Yes, Sir.

Q: But you did not prepare for the buy-bust operation?

A: Yes, Sir.

Q: And you proceeded to the place without any buy-bust money?

A: Yes, Sir.

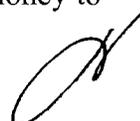
x x x x

Q: During that short span of time you were only about to talk a little?

A: Yes, Sir.

Q: And Juan asked for the money?

A: No[,] I was the one who asked the item before I will give the money to him, Sir.



Q: So Juan did not ask from you the payment of any item during the conversation?

A: Yes because there was already an arrangement, Sir.

x x x x

In the crime of illegal sale of dangerous drugs, the delivery of the illicit drug to the poseur-buyer and the receipt by the seller of the marked money consummate the illegal transaction.³⁰ In the case at bar, the sale was not consummated since there was no receipt of the consideration. IA1 Natividad arrested Asislo immediately after the latter opened one of the sacks loaded with bricks of marijuana. It was also admitted that the agents did not prepare marked money for the buy-bust operation.

Nevertheless, Asislo can still be liable for violation of Article II, Section 5 of R.A. No. 9165 for illegal delivery and transportation of marijuana.

The essential element of the charge of illegal transportation of dangerous drugs is the movement of the dangerous drug from one place to another.³¹ As defined in the case of *People v. Mariacos*,³² “transport” means “to carry or convey from one place to another.”³³

There is no definitive moment when an accused “transports” a prohibited drug. When the circumstances establish the purpose of an accused to transport and the fact of transportation itself, there should be no question as to the perpetration of the criminal act.³⁴ The fact that there is actual conveyance suffices to support a finding that the act of transporting was committed.³⁵

In the instant case, records established beyond any doubt that accused-appellant Asislo was found in possession of the sacks containing marijuana, and was arrested while in the act of delivering or transporting such illegal drugs to Natividad, the poseur-buyer, at the agreed place in Dontogan, Green Valley, Baguio City, near a certain “car wash.”

³⁰ *People v. Efren Basal Cayas*, *supra* note 20.

³¹ *People v. Laba*, G.R. No. 199938, January 28, 2013, 689 SCRA 367, 374.
³² 635 Phil. 315 (2010).

³³ *People v. Mariacos*, *supra*, at 333.

³⁴ *Id.*

³⁵ *Id.* at 333-334.

It is undisputed that Asislo, who was a farmer and a broom maker at the time of his arrest,³⁶ had no authority under the law to deliver the marijuana, a dangerous drug. The testimony of IA1 Natividad provided the following details in his direct testimony:

PROS. ESPINOSA

Q: Before contacting the delivery of marijuana bricks, Mr. witness how did you come about with the delivery of the marijuana?

A: Sometime on the second week of April 2008[,] our office received an intelligence information relayed to us by our intelligence counterpart in La Union, ma'am.

X X X X

Q: So what happened after Apalla received these information, Mr. witness?

A: PCI Apalla designated me as the case officer and instructed me also that I keep in touch with our counterpart in La Union for purposes of strengthening the case against the suspect personalities, ma'am.

X X X X

Q: So what happened after that, Mr. witness when Apalla tell you that you will now coordinate with the intelligence officer counterpart in La Union?

A: I coordinated with our counterpart in La Union between 2nd and 3rd week of April, I personally contacted PDEA Region 1 regarding the illicit activity of the suspects and one of the leader of the group is with an alias Juan from Sasaba, Santol, La Union and he has also an unidentified cohorts, ma'am.

Q: This Juan you are telling me is Juan Asislo, am I right, Mr. witness?

A: Yes, ma'am.

X X X X

Q: When the CI introduced himself to you, did he not mention about the activities of the suspects, who are the suspects, he did not made mention of that?

A: He did mention, ma'am.

Q: So what did he tell you about the activities of these persons?

A: That they were involved in the proliferation and distribution of marijuana in La Union and other provinces like Benguet and Baguio, ma'am.

X X X X

Q: What are these drug activities then?

A: They deliver undetermined volume of marijuana to the unidentified buyers of marijuana in La Union and nearby provinces, ma'am.

³⁶ TSN, February 23, 2009, p. 5.



x x x x

Q: So what did they talk about?

A: The CI relayed to the suspect that his prospective buyer from Manila is willing to buy 200 kilos of marijuana in that agreed price, ma'am.

Q: So what was the response of the suspect?

A: During the conversation, the suspect advise[d] the CI that he wants also to talk with the prospective buyer, ma'am.

x x x x

Q: So what happened after that?

A: So as per request by suspect Juan the CI gave to me his mobile phone and I talked with suspect Juan regarding the transaction, ma'am.

x x x x

Q: You talked immediately about the transaction, you did not even introduce yourself to the suspect, Mr. witness?

A: I introduced myself as the buyer of marijuana, ma'am.

Q: How did you introduce yourself to him, did you use any name?

A: No, ma'am I just told him that I am the buyer of Jojo, the name of the CI.

Q: So what did you tell the suspect, that you are interested to buy 200 kilos of marijuana?

A: Yes, ma'am.

Q: What was the reaction of the suspect?

A: He agreed with the transaction but I advise him that I would agree with the prevailing price provided that they should deliver the items in Baguio City because I was still here in Baguio for vacation for 2 weeks, I pretended that I was here in Baguio City for 2 weeks vacation, ma'am.

Q: So what was the reaction of the suspect when you told him that the marijuana should be delivered here in Baguio City?

A: He agreed, ma'am but he insisted that the 200 kilos I ordered is not available because other stocks have been ordered by the other buyers.

x x x x

Q: While the Besta van was already approaching, what happened again?

A: I notice that they stopped in front of the car wash and there were 2 men who alighted from the Besta van, ma'am.

Q: And who were these 2 persons?

A: I recognized that the one of the persons who alighted from that Besta van is our CI Jojo so I walk towards and closer with them, ma'am.

Q: Who was with Jojo that time?

A: Juan Asislo, ma'am.



Q: How do you know that fact?

A: Jojo or the CI introduced me to Juan Asislo, ma'am.

Q: How were you introduced?

A: That I am the buyer of their stuff, ma'am.

x x x x

Q: When this Juan Asislo told you that he was really Asislo, what happened after that?

A: I talked with Asislo about the transaction and I asked him the whereabouts of the stuff that I ordered from them, ma'am.

Q: So what was the response of Asislo?

A: He told me that the [stuff] were placed at the back of the Besta van, ma'am.

Q: When Asislo told you that the [stuff] were at the back of the van, what was your response?

A: I told him that before I give the money I should see first the stuff, ma'am.

Q: What was the reaction of Asislo?

A: Asislo agreed to my proposal, ma'am.

Q: So what did you do?

A: Juan advise his driver to alight from the van and he will open the back of the Besta van, ma'am.

x x x x

Q: Who pulled one of the sacks?

A: His companion, Samuel Pal-iwen, Ma'am.

Q: He pulled out one of the white sacks with NFA markings, is it not?

A: Yes, Ma'am.

Q: When he pulled out the white sack having the NFA markings what happened after that?

A: When he pulled out one of the sacks with NFA markings from the Besta Van I requested suspect Juan to open it and when he opened the sack I saw personally the tens of bricks of marijuana dried in the form of bricks so upon seeing the contents of that sack subsequently I removed my ball cap from my head as the pre-arranged signal that the transaction was consummated, Ma'am.

x x x³⁷

It was settled in *People v. Hoble*³⁸ that "possession of prohibited drugs, coupled with the fact that the possessor is not a user thereof, cannot indicate anything else but the intention to sell, distribute or deliver the

³⁷

TSN, February 9, 2008, pp. 6-8; 14-15; 21-23; 50-52; TSN, February 10, 2008, pp. 4-5.

³⁸

G.R. No. 96091, July 22, 1992, 211 SCRA 675, 682.

prohibited stuff.” In an earlier case, the Court considered three plastic bags of marijuana leaves and seeds as considerable quantity of drugs, such that possession of similar amount of drugs and the fact that the accused is not a user of prohibited drugs clearly demonstrates his intent to sell, distribute and deliver the same.³⁹

In the case at bar, Asislo was found in possession of 110 kilograms of dried marijuana leaves contained in five sacks and a plastic bag, and that his drug test yielded negative result. The following circumstances strongly indicate that he has the intention to sell, distribute, deliver or transport the said marijuana.

Records reveal that the prosecution has proven in the trial the purpose of the accused in the transportation of marijuana, and the fact of transportation itself. Particularly, the following circumstances establish that the crime of illegal transportation of dangerous drugs has been committed:

- a. There was a prior unlawful arrangement between Natividad and the accused-appellant Asislo that the former will buy marijuana from the latter;
- b. There is a designated place of delivery, which is Dontogan, Green Valley, Baguio City, near a certain “car wash,” and a specified time frame, on May 13, 2008 between 7 o’clock and 8 o’clock in the morning, and limited to a particular person whom Natividad himself has transacted with through the cell phone, such that whoever would appear thereat would be it.
- c. Asislo leased the van for ₱2,000.00 from Tad-o for transportation from Santol, La Union to Baguio City.⁴⁰
- d. Asislo was apprehended on the street, immediately after he opened the sack loaded with blocks of marijuana, and while he was in the act of delivering the drugs to Natividad.
- e. The agents found a substantial volume of marijuana loaded at the back of the leased vehicle.

Asislo’s denial deserves scant consideration. His claim that it was the informant Jojo who leased the van to transport bananas and brooms was belied by the owner himself in his motion to recover the vehicle wherein he alleged that it was Asislo who hired the van from him. Furthermore, when Natividad approached Asislo, was introduced by Jojo as the buyer of marijuana, and asked where his order was, Asislo immediately understood who Natividad was and what he meant about the order.

³⁹ *People vs. Claudio*, 243 Phil. 795, 803. (Emphasis supplied).

⁴⁰ Records, p. 58.

Based on the charges against Asislo and the evidence presented by the prosecution, accused-appellant Asislo is guilty beyond reasonable doubt of **illegal delivery and transportation of marijuana** under Article II, Section 5 of R.A. No. 9165.

As to the penalty, Article II, Section 5 of R.A. No. 9165 prescribes that the penalties for the illegal delivery and transportation of dangerous drugs shall be life imprisonment to death and a fine ranging from Five Hundred Thousand Pesos (₱500,000.00) to Ten Million Pesos (₱10,000,000.00). Thus, accused-appellant Asislo, for his illegal delivery and transportation of 110 kilograms of marijuana in Criminal Case No. 28307-R, is sentenced to life imprisonment, and ordered to pay a fine of One Million Pesos (₱1,000,000.00).

WHEREFORE, the appealed Decision in CA-G.R. CR-HC No. 04081 is hereby **AFFIRMED**. The accused-appellant Juan Asislo y Matio, in Criminal Case No. 28307-R, is found **GUILTY** beyond reasonable doubt of illegal delivery and transportation of 110 kilograms of marijuana penalized under Article II, Section 5 of R.A. No. 9165, and is sentenced to **LIFE IMPRISONMENT**, and **ORDERED** to **PAY** a **FINE** of One Million Pesos (₱1,000,000.00).

SO ORDERED.


DIOSDADO M. PERALTA
Associate Justice

WE CONCUR:


PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson


ARTURO D. BRION
Associate Justice


JOSE PORTUGAL PEREZ
Associate Justice


BIENVENIDO L. REYES
Associate Justice

ATTESTATION

I attest 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.


PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, 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.


MARIA LOURDES P. A. SERENO
Chief Justice

CERTIFIED TRUE COPY

WILFREDO V. LAPITAN
Division Clerk of Court
Third Division

FEB 19 2016