FIRST DIVISION

G.R. No. 236259 — PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, versus* **EMILIANO BATERINA y CABADING,** *accused-appellant.*

Promulgated:

SEP 16 2020

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DISSENTING OPINION

CAGUIOA, *J.*:

I dissent.

The accused Emiliano Baterina (Baterina) should be acquitted from the charge of violating Section 5 of Republic Act No. (RA) 9165 as the *corpus delicti* of the crime is inadmissible as evidence and, in any event, there exists reasonable doubt as to his culpability.

Brief review of the facts

Baterina, along with a few others, were charged with a violation of Section 5 of RA 9165, the accusatory portion of the Information reads:

> That on or about the 3rd day of August 2010 in the Municipality of San Gabriel, Province of La Union, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused conspiring, confederating and mutually helping one another did then and there willfully, unlawfully, feloniously and knowingly transport and deliver marijuana fruiting tops with a total weight of FORTY EIGHT THOUSAND FIVE HUNDRED SIXTY FIVE POINT SIXTY EIGHT (48,565.683) grams with the use of Red Owner Type Jeep with plate no. PGE 708, without the necessary authority or permit from the proper government authorities.
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> Contrary to law.[1]

According to the prosecution, the police officers in La Union received a text message from a concerned citizen that men and women would be transporting a large volume of dried marijuana leaves. Based on this tip, the police officers immediately put up a checkpoint. A few hours later, they were able to flag down an owner-type jeep driven by Baterina. There were four other passengers in the jeepney, including a minor child. Afterwards, one of the police officers proceeded to the back of the jeep to see what was inside the jeep and upon looking at a partially opened curtain, he allegedly smelled the

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[1] *Ponencia*, p. 2.

odor of *marijuana* coming from inside the jeep. Thus, an inspection was conducted on the said vehicle in the presence of the *barangay* captain of the area.

The inspection then led to the discovery of several bags containing a total of 23 bricks of marijuana. The marking and initial inventory of the seized items were then immediately conducted. Subsequently, Baterina and the others were brought to the municipal hall for documentation. In the municipal hall, a full inventory of the seized items was conducted in the presence of all the three required witnesses: an elected official (the *barangay* captain) and representatives from the media and Department of Justice.

In his defense, Baterina testified that his wife received a text message from one of the passengers asking him to fetch a sick person and bring him to the hospital. It was the usual practice in the municipality to hire private vehicles. Upon meeting the persons who sent him the text message, he saw that they were carrying bags. Baterina was told by the passengers that it only contained their clothes. While traversing the road, the police officers flagged them down and told them to alight from the vehicle. The police officers likewise brought the baggage down to examine them and it was revealed that it contained marijuana, which surprised Baterina. Baterina further testified that he knew the one who texted his wife because she had hired him thrice already in the past.

Baterina's three co-accused, his adult passengers, also testified and they confirmed that they hired Baterina to bring the child to the hospital. However, they claimed that the bags were not theirs but Baterina's. According to them, Baterina told them that he would be transporting the bags to Baguio City.

After trial, the RTC convicted Baterina of the crime but acquitted the others. Upon appeal to the CA, it affirmed Baterina's conviction.

Hence, the present case.

The *ponencia* affirms the conviction of Baterina, ratiocinating that the crime involved is *malum prohibitum* and that the act of transporting the prohibited drugs need not be proven to be accompanied with criminal intent. Meanwhile, on the argument that the discovery of the prohibited items was borne by an illegal search, the *ponencia* rules that questions on the illegality of arrest should have been raised prior to the arraignment and, in any event, search of a moving vehicle is a jurisprudentially recognized instance of a valid warrantless search. Finally, the *ponencia* holds that the chain of custody rule under RA 9165 was likewise followed by the police officers and successfully proven by the prosecution.

While I agree that the chain of custody rule was followed in this case, I find myself, with due respect, disagreeing with the decision to affirm the

conviction. In my view, the *corpus delicti* of the crime is inadmissible, and that, in any event, there is reasonable doubt as to Baterina's guilt.

The discovery of the marijuana was borne by an illegal search

It is true, as the *ponencia* holds, that searches at checkpoints are recognized exceptions to the general requirement of securing a warrant before conducting a search. Searches of moving vehicles, including checkpoint searches, however, must generally be limited only to visual searches in order to be valid. As the Court explained in *Veridiano v. People*[2] (*Veridiano*):

> Checkpoints per se are not invalid. They are allowed in exceptional circumstances to protect the lives of individuals and ensure their safety. They are also sanctioned in cases where the government's survival is in danger. **Considering that routine checkpoints intrude "on [a] motorist's right to 'free passage'" to a certain extent, they must be "conducted in a way least intrusive to motorists." The extent of routine inspections must be limited to a visual search. Routine inspections do not give law enforcers carte blanche to perform warrantless searches.**[3] (Emphasis and underscoring supplied)

An extensive search, however, may still be valid as long as probable cause exists **before the search** was actually conducted. As the Court held in *People v. Bagista*:[4]

> With regard to the search of moving vehicles, this had been justified on the ground that the mobility of motor vehicles makes it possible for the vehicle to be searched to move out of the locality or jurisdiction in which the warrant must be sought.
>
> This in no way, however, gives the police officers unlimited discretion to conduct warrantless searches of automobiles in the absence of probable cause. **When a vehicle is stopped and subjected to an extensive search, such a warrantless search has been held to be valid only as long as the officers conducting the search have reasonable or probable cause to believe before the search that they will find the instrumentality or evidence pertaining to a crime, in the vehicle to be searched.**[5] (Emphasis and underscoring supplied)

Here, apart from the tip which the officers received, there was no other fact establishing probable cause. Of the two police officers presented on the stand, neither of them was able to establish that there was probable cause to conduct an extensive search of the vehicle.

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2 G.R. No. 200370, June 7, 2017, 826 SCRA 382.
3 Id. at 409-410.
4 G.R. No. 86218, September 18, 1992, 214 SCRA 63.
5 Id. at 69.

PO2 Magno Olete (PO2 Olete) attempted to justify the extensive search by claiming to have seen a plastic bag when he peeped through the curtain. He testified:

> Q: And so what did you do when the curtains was *(sic)* "naka-usli?"
> A: We look at the curtain using our flashlight, sir.
>
> **Q: And what happened when you looked inside the jeep using flashlight?**
> **A: We saw plastic bags, sir.**
>
> **Q: And what happened when you saw plastic bags?**
> **A: We saw the plastic bag, sir, we asked the occupants to alight from the vehicle.**
>
> Q: And what happened next mister witness?
> A: We called on the Barangay captain who is 20 meters away from our check point.
>
> Q: And what happened when the Barangay captain was called by you?
> A: When the Barangay captain arrived, we conducted the search.
>
> Q: And what is the result of that search?
> A: When we already conducted the search, sir, we found out that the contents of the plastic bag were bricks of marijuana.[6] (Emphasis supplied)

On cross-examination, he confirmed that they ordered the passengers to step out of the vehicle — thus, an extensive search — only because of their having seen plastic bags:

> Q: So, every motor vehicle that would pass in that highway would be flagged down mister witness?
> A: Yes, sir.
>
> Q: You also testified during the last hearing that you flagged down an owner type jeep?
> A: Yes, sir.
>
> Q: And you used a flashlight to see the contents of the owner type jeep?
> A: Yes, sir.
>
> Q: And upon see[ing] the plastic bag as you testified mister witness, you ordered them to step down from the vehicle?
> A: Yes, sir.
>
> **Q: So, from that moment that you spotted, as you testified last hearing, you only saw plastic bags?**
> **A: Yes, sir.**

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[6] TSN dated October 7, 2010, pp. 8-9.

Q: So, from that moment mister witness, you did not see any marijuana bricks, alleged marijuana bricks?
A: I saw one plastic bag slightly opened.

Q: But you did not see any alleged marijuana bricks at that time that you spot your flashlight on that plastic bag?
A: Only one bag that was slightly opened, sir.

Q: No, I am asking you mister witness whether you saw marijuana bricks at that time?
A: None, sir.

Q: So, you only discovered the marijuana bricks after searching, opening the plastic bag and removing what was on top of that plastic bag?
A: Yes, sir.[7] (Emphasis supplied)

By no stretch, however, could it be reasonably argued that having plastic bags in the vehicle already suffices as probable cause so as to justify an extensive or intrusive search.

The other officer who took the stand, PSI Reynaldo Soria (PSI Soria), also tried to justify the extensive search by claiming that he was able to smell marijuana when he went to the back of the jeep. However, this claim proved to be incredible when tested during the trial, as shown by the following cross-examination of PSI Soria:

Q: Now Mr. Witness, you testified that you can smell marijuana at that time, isn't it?
A: Yes sir.

Q: It was merely based on a small opening, isn't it?
A: Yes sir.

Q: Now Mr. Witness, this marijuana bricks *(sic)* is very close to your nose, isn't it?
A: Yes sir.

Q: And yet, you could not smell it, isn't it?
A: Yes sir.

Q: You could identify that what is inside this thing is marijuana because you could not smell it, isn't it?
A: During the time of –

Q: My question is answerable by yes or no Mr. Witness?
A: Yes sir.

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7 TSN dated November 9, 2010, pp. 5-6.

Q: Now Mr. Witness, you would agree with me that you allegedly smell marijuana at that time of the incident, you were around five (5) to ten (10) meters, isn't it?
A: No sir.

Q: How many meters are you away?
A: Very near sir.

x x x x

Q: Could you approximate how near is that Mr. Witness?
A: One inch from the gutter of the jeep sir.

Q: One inch from the gutter of the jeep. [M]y question is not from the gutter of the vehicle, but your distance from the marijuana or from the object evidence Mr. Witness, I'm not asking about the gutter of the jeep. I'm asking about the distance from the object evidence Mr. Witness, how far are you?
A: Very near sir.

Q: How near is that near Mr. Witness, the distance, I'm asking about the distance?
A: About one (1) foot only sir.

Q: So, you would agree with me that one (1) foot is here?
A: Yes sir.

Q: Now Mr. Witness, I'm holding a brick of marijuana that was identified by the Chemist, my question is can you smell the brick?
A: At present no sir.

Q: No, you could not smell it?
A: Yes sir, at present.

Q: But if you put it close to your nose, that would be the time that you would be able to smell it, isn't it?
A: Yes sir.

Q: So Mr. Witness, you would agree with me that in spite of the fact that this brick of marijuana is now removed from the bag, you could not smell the brick of marijuana in spite of the fact that I position myself one (1) foot away from you, is that correct?
A: At present sir, I cannot smell.[8] (Emphasis supplied)

During redirect examination, the prosecution attempted to establish that PSI Soria could not smell the marijuana in the courtroom because "the situation x x x inside the [c]ourtroom x x x is airconditioned"[9] and that the marijuana was newly repacked.[10] However, PSI Soria's "theories"

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8 TSN dated January 20, 2011, pp. 28-31.
9 TSN dated March 1, 2011, p. 4.
10 TSN dated March 1, 2011, p. 5.

immediately lost credibility when he was subjected to re-cross examination as follows:

> Q: Now Mr. Witness, you also testified that there are two (2) reasons that's why you cannot smell marijuana in this Court room, isn't it?
> A: Yes, sir.
>
> Q: And one is because the place is enclosed, isn't it?
> A: Yes, sir.
>
> Q: And it has air con, isn't it?
> A: Yes, sir.
>
> Q: But you would agree with me that being a Police Officer, you finished science, isn't it?
> A: Yes, sir.
>
> Q: And it is basic in science that when a field is an open field, it is basic that you cannot smell what is in open, isn't it? Because it's a very big place, isn't it?
> A: Yes, sir.
>
> Q: And also basic in science is that, when it is an enclosed room, you will be able to smell what is inside that room, is it not? Because it is enclosed, isn't it?
> A: This room is -
>
> Q: My question again is answerable by yes or no?
> A: Yes, sir.
>
> x x x x
>
> Q: Mr. Witness, you also testified that during that time the alleged marijuana was newly repacked, isn't it?
> A: Yes, sir.
>
> Q: Mr. Witness, were you present when the marijuana was repacked?
> A: No, sir.
>
> Q: So you do not know for a fact that it was newly packed or it was packed mo[n]ths ago, weeks ago or years ago, isn't it?
> A: But during that time sir -
>
> Q: My question is answerable by yes or no again Mr. Witness?
> A: Yes, sir.[11]

It is thus clear that *in this particular case*, neither of the officers had probable cause — as the plastic bag, *by itself*, is not sufficient, and the claim of having smelled the marijuana has been disproven — apart from the tip from the "concerned citizen." Despite this, the officers still conducted an extensive and intrusive search. The Court, however, has already held with unequivocal

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[11] TSN dated March 1, 2011, pp. 7-9.

clarity that in situations involving warrantless searches and seizures, **"law enforcers cannot act solely on the basis of confidential or tipped information. A tip is still hearsay no matter how reliable it may be. *It is not sufficient to constitute probable cause in the absence of any other circumstance that will arouse suspicion.*"**[12]

Just recently, the Court *en banc* once again upheld this principle in *People v. Sapla*,[13] in which it explained the rationale as follows:

> It is not hard to imagine the horrid scenarios if the Court were to allow intrusive warrantless searches and seizures on the solitary basis of unverified, anonymous tips.
>
> Any person can easily hide in a shroud of anonymity and simply send false and fabricated information to the police. Unscrupulous persons can effortlessly take advantage of this and easily harass and intimidate another by simply giving false information to the police, allowing the latter to invasively search the vehicle or premises of such person on the sole basis of a bogus tip.
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> On the side of the authorities, unscrupulous law enforcement agents can easily justify the infiltration of a citizen's vehicle or residence, violating his or her right to privacy, by merely claiming that raw intelligence was received, even if there really was no such information received or if the information received was fabricated.
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> Simply stated, *the citizen's sanctified and heavily-protected right against unreasonable search and seizure will be at the mercy of phony tips*. The right against unreasonable searches and seizures will be rendered hollow and meaningless. The Court cannot sanction such erosion of the Bill of Rights.[14]

To reiterate, checkpoint searches are valid as warrantless searches only if they are conducted merely as visual searches. **To justify an extensive search, therefore, there must be other facts establishing probable cause apart from the tip received by the officers**. As the Court has extensively explained, still in *Veridiano*:

> That the object of a warrantless search is allegedly inside a moving vehicle does not justify an extensive search absent probable cause. **Moreover, law enforcers cannot act solely on the basis of confidential or tipped information. A tip is still hearsay no matter how reliable it may be. It is not sufficient to constitute probable cause in the absence of any other circumstance that will arouse suspicion.**
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> Although this Court has upheld warrantless searches of moving vehicles based on tipped information, there have been other circumstances that justified warrantless searches conducted by the authorities.

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12 *Veridiano v. People*, supra note 2 at 411. Emphasis and underscoring supplied.

13 G.R. No. 244045, June 16, 2020, accessed at <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/66263>.

14 Id.

> In *People v. Breis*, apart from the tipped information they received, the law enforcement agents observed suspicious behavior on the part of the accused that gave them reasonable ground to believe that a crime was being committed. The accused attempted to alight from the bus after the law enforcers introduced themselves and inquired about the ownership of a box which the accused had in their possession. In their attempt to leave the bus, one (1) of the accused physically pushed a law enforcer out of the way. Immediately alighting from a bus that had just left the terminal and leaving one's belongings behind is unusual conduct.
>
> In *People v. Mariacos*, a police officer received information that a bag containing illegal drugs was about to be transported on a passenger jeepney. The bag was marked with "O.K." On the basis of the tip, a police officer conducted surveillance operations on board a jeepney. Upon seeing the bag described to him, he peeked inside and smelled the distinct odor of marijuana emanating from the bag. The tipped information and the police officer's personal observations gave rise to probable cause that rendered the warrantless search valid.
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> The police officers in *People v. Ayangao* and *People v. Libnao* likewise received tipped information regarding the transport of illegal drugs. In *Libnao*, the police officers had probable cause to arrest the accused based on their three (3)-month long surveillance operation in the area where the accused was arrested. On the other hand, in *Ayangao*, the police officers noticed marijuana leaves protruding through a hole in one (1) of the sacks carried by the accused.[15] (Emphasis and underscoring supplied)

From the facts of this case, however, it is very clear that the "tip" was the only real basis of the police officers, as the other supposed facts that supposedly constituted probable cause were shown to be incredible. Indeed, "it is doctrinal that **all** doubts must be resolved in favor of the accused,"[16] including the doubtful facts in the present case.

Thus, as the search conducted by the police officers in this case was invalid, the seized items — despite their immense volume — must be set aside for being fruits of the poisonous tree.

The prosecution failed to establish that Baterina had intent to possess the prohibited items

I do not dispute the statement in the *ponencia* that criminal intent need not be proved in the prosecution of acts *mala prohibita*. However, in acts *mala prohibita*, **it is still required that the accused must have intended to commit the act** that is, by the very nature of things, the crime itself. In the words of former Chief Justice Panganiban in *People v. Lacerna*,[17] "[i]ntent to

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15 *Veridiano v. People*, supra note 2 at 411-412.
16 *People v. Delima*, G.R. No. 222645, June 27, 2018, 869 SCRA 94, 110.
17 G.R. No. 109250, September 5, 1997, 278 SCRA 561.

commit the crime is not necessary, but intent to perpetrate the act prohibited by the special law must be shown."[18]

In other words, even if the offense of illegal possession of dangerous drugs is *malum prohibitum*, "[t]his, however, does not lessen the prosecution's burden because it is still required to show that the prohibited act was intentional."[19] In cases involving the illegal possession of dangerous drugs, "the prosecution is not excused from proving that possession of the prohibited act was done 'freely and consciously,' which is an essential element of the crime."[20]

Hence, a critical element of the crime of illegal possession of dangerous drugs is the element of intent to possess or *animus possidendi*.

The Court has held that in criminal cases involving prohibited drugs, there can be no conviction unless the prosecution shows that the accused knowingly, freely, intentionally, and consciously possessed the prohibited articles in his person, or that *animus possidendi* is shown to be present together with his possession or control of such article.[21]

The concept of possession contemplated under RA 9165 goes beyond mere actual and physical possession of the drug specimen. Otherwise, any unsuspecting person who is victimized by the planting of evidence will be unjustly prosecuted based on the sheer fact that illegal drugs were found to be in his possession. To digress and to recall, the victims of "Laglag Bala" could not have been convicted if it is proven that the bullets found in their personal bags were not put there by them in the first place. It must be proven that the person in whose possession the drug specimen was found knew that they were possessing illegal drugs.

Therefore, to prosecute an accused for illegally possessing, or in this case, transporting, illegal drugs, ***the prosecution must go beyond and provide evidence that the accused knowingly, freely, consciously, and intentionally possessed the bag knowing it to contain illegal drugs.***

Jurisprudence tells us that since knowledge refers to a mental state of awareness of a fact and, therefore, courts cannot penetrate the mind of an accused and thereafter state its perceptions with certainty, resort to other evidence is necessary.[22] Hence, the intent to possess, being a state of mind, may be determined on a *case-to-case basis* by taking into consideration the prior or contemporaneous acts of the accused, as well as the surrounding circumstances. Its existence may and usually must be inferred from the attendant events in each particular case.[23]

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18 Id. at 581.
19 Id.
20 Id.
21 *People v. Peñaflorida, Jr.*, G.R. No. 175604, April 10, 2008, 551 SCRA 111, 126.
22 Id.
23 Id.

After an intensive review of the records of this case, I strongly believe that there is ***reasonable doubt*** as to whether the bags even belonged to Baterina. To me, the surrounding factual circumstances, as established by the evidence on record, fail to clearly establish that there was *animus possidendi* on the part of Baterina.

For instance, in acquitting Baterina's co-accused, the RTC stated:

> In this case, the prosecution, other than its bare assertions that accused Baterina conspired with Pakoyan, Dayao and Puklis in transporting the five (5) bags of marijuana, failed to establish that there was indeed a conscious criminal design existing between them and accused Baterina to commit the said offense. True, accused Pakoyan, Dayao and Puklis were inside the jeep that fateful day of August 3, 2010, but it could not be deduced that they were aware of the contents of the five (5) plastic bags. These facts, standing alone, cannot give rise to a presumption of conspiracy.
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> Certainly, conspiracy must be proven through clear and convincing evidence. **Indeed, it is possible that accused Pakoyan, Dayao and Puklis were telling the truth when they said that they merely hired accused Baterina to bring their sick child to the hospital.** In short, the Court finds that mere presence of accused Pakoyan, Dayao and Puklis inside the jeep as passengers were inadequate to prove that they were also conspirators of accused Baterina.[24] (Emphasis and underscoring supplied)

It is important to note that the ownership of the bags was never truly established. Prescinding from this uncertainty, the RTC treated as reasonable doubt the ***possibility*** that these people did not actually own, possess, or at least know the contents, of the bags.

The above reasoning of the RTC, however, could similarly be said about Baterina.

PO2 Olete, one of the witnesses for the prosecution, himself admitted that it was customary in the area to hire private vehicles as a mode of transportation. During the cross-examination, PO2 Olete testified as follows:

> Q: How long have you been stationed in San Gabriel police station mister witness?
> A: Three (3) years, sir.
>
> Q: So, in that span of time you are aware of [the] topography of San Gabriel?
> A: Yes, sir.
>
> Q: And you are aware also that some parts of the Barangay are located in far flung areas?
> A: Yes, sir.

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[24] CA *rollo*, p. 76.

Q: And the mode of transportation in going to and from these barangays is only through motorized vehicles. Is that right mister witness?
A: Yes, sir.

Q: So, you are also familiar with the arrangements in going to and from these places that it must be on a contract basis mister witness?
A: Yes, sir.

Q: That you have to hire a motor vehicle so that you can transport your things from these far flung areas?
A: During night only, sir.[25]

In addition, based on the defense evidence, Baterina and his wife both claimed that he was engaged in the business of driving, **and even his three co-accused confirmed** that they indeed hired him to transport them.

It is not far-fetched for a group of people — like Baterina's co-accused — to bring bags on their way to a hospital. In fact, it is even more contrary to human experience if they did not actually bring bags if they truly were on their way to the hospital. Moreover, common sense and human experience dictates that hired vehicles are normally emptied before the start of the journey because the space inside should be for the use of the lessees, ***not the lessor***, during the time period.

Thus, Baterina's testimony that he was just hired as a driver by his three co-accused, that the bags were not his, and that he did not know the contents of the bags has a ring of truth to it. In fact, it is my view that as between Baterina and his three co-accused, the RTC should have acquitted Baterina whose testimony is more consistent with logic, common sense, and human experience. Parenthetically, if there was anyone that the RTC should have convicted, it should have been one or all of Baterina's co-accused, not him. After all, the prosecution witness who received the initial tip himself testified that the text message he received mentioned that "**a group of men and women** will transport [a] big volume of dried marijuana"[26] — a description that fits the group that hired Baterina.

In this connection, it is well-settled that "if the inculpatory facts and circumstances are capable of two or more interpretations, one of which being consistent with the innocence of the accused and the other or others consistent with his guilt, then the evidence in view of the constitutional presumption of innocence has not fulfilled the test of moral certainty and is thus insufficient to support a conviction."[27]

Given the foregoing, the same possibilities that became the grounds for reasonable doubt on the part of Baterina's co-accused likewise exists, if not more, for Baterina. **To repeat, the ownership of the bags containing**

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25 TSN dated November 9, 2010, pp. 6-7.
26 TSN dated January 20, 2011, p. 5.
27 *Franco v. People*, 780 Phil. 36 (2016).

marijuana was never established — a burden that the prosecution failed to discharge. To my mind, this constitutes sufficient reasonable doubt on Baterina's guilt.

In sum, Baterina should be acquitted because the *corpus delicti* of the crime is inadmissible for being fruit of the poisonous tree. Even assuming, however, that the seized items were admissible, Baterina should still be acquitted in consonance with the constitutional presumption of innocence due to the failure of the prosecution to establish that he owned — or at least had the intent to possess — the bags containing the contraband.

I would like to end this Opinion with a quote from a 1995 case that remains to ring true until today: "[m]uch as we share the abhorrence of the disenchanted public in regard to the proliferation of drug pushers, this Court cannot permit the incarceration of an individual based on insufficient factual nexus of that person's participation in the commission of the offense."[28]

In view of the foregoing, I vote to **GRANT** the Petition. The accused-appellant Emiliano Baterina y Cabading should be **ACQUITTED** from the charge of violating Section 5, Republic Act No. 9165.

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

[28] *People v. Melosantos*, G.R. No. 115304, July 3, 1995, 245 SCRA 569, 587.