

THIRD DIVISION

[G.R. No. 234317, May 10, 2021]

VIRGILIO EVARDO Y LOPENA, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

DECISION

LEONEN, J.:

A warrantless, intrusive search of a moving vehicle cannot be premised solely on an initial tip.^[1] It must be founded on probable cause where "[t]here must be a confluence of several suspicious circumstances."^[2] As the cause for the search, each such circumstance must occur *before* the search is commenced. Further, they must each be *independently* suspicious. Thus, when law enforcers are predisposed to perceive guilt—as when specific persons are the targets of checkpoints, patrols, and similar operations—their subjective perception cannot anchor probable cause.

This Court resolves the Petition for Review^[3] assailing the Decision^[4] and Resolution^[5] of the Court of Appeals, which affirmed the conviction^[6] of petitioner Virgilo Evardo y Lopena (Evardo) for violation of Section 11 of Republic Act No. 9165, or the Comprehensive Dangerous Drugs Act.

In two separate informations, Evardo and Justo Algozo (Algozo), now deceased, were charged with illegal possession of dangerous drugs or violating Section 11 of Republic Act No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002.^[7]

The Information against Evardo reads:

That on or about the 23rd day of March 2004 in the municipality of Talibon, Province of Bohol, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with intent of disregarding existing laws, did then and there, willfully, unlawfully, feloniously and knowingly have in his possession, custody and control dangerous drugs consisting of 0.17 gram of Methamphetamine Hydrochloride locally known as "Shabu" contained in seven (7) heat-sealed transparent plastic packs without first obtaining a permit or authority to possess the same from the proper government authority, to the damage and prejudice of the Republic of the Philippines.

Acts committed contrary to the provision of Section 11, Art. II of R.A. 9165.^[8]

The Information against Algozo reads:

That on or about the 23rd day of March 2004 in the municipality of Talibon, Province of Bohol, Philippines and within the jurisdiction of this

Honorable Court, the above-named accused, with intent of disregarding existing laws, did then and there, willfully, unlawfully, feloniously and knowingly have in his possession, custody and control dangerous drugs consisting of 0.49 gram of Methamphetamine Hydrochloride locally known as "Shabu" contained in eighteen (18) heat-sealed transparent plastic packs without first obtaining a permit or authority to possess the same from the proper government authority, to the damage and prejudice of the Republic of the Philippines.

Acts committed contrary to the provision of Section 11, Art. II of R.A. 9165.^[9]

Evardo and Algozo both pleaded not guilty during their arraignment. The court conducted a joint pre-trial and trial then ensued.^[10]

The prosecution recounted that at around 6:30 pm on March 23, 2004, Police Superintendent Ernest Agas (P/Supt. Agas), the Chief of Police of the Talibon, Bohol Police Station, received information from an asset regarding the alleged purchase of shabu by suspected drug dealers Evardo and Algozo, who were already in the police watch list and were the subject of prior surveillance operations.^[11]

In his testimony, Senior Police Officer III Restituto Auza (SPO3 Auza) admitted that "the police already knew the two accused who were residents of Talibon[.]"^[12] Moreover, he also admitted that they had been in the process of obtaining a search warrant, "but it was not pushed (sic) through."^[13] He added that they had prepared a surveillance report, but that he could not remember if it was still at their office.^[14]

The asset further told P/Supt. Agas that Evardo and Algozo would traverse the highway of Banacon, Getafe, Bohol. With the information conveyed to him, P/Supt. Agas formed a team to set up a checkpoint.

With P/Supt. Agas as the leader, the team consisted of the following officers: (1) SPO3 Auza; (2) Senior Police Officer I Danilo Torcende (SPO1 Torcende); (3) Police Officer III Corsino Gabutan; (4) Police Officer II Marino Auxtero; (5) Police Officer I Melquiadito Aventajado; (6) Police Officer I Jose Bongator (PO1 Bongator); (7) Senior Police Officer III Victor Auza; and (8) Police Officer II Hermogenes Auza.^[15]

At 8:30 p.m., two hours after receiving the information, the team set up their checkpoint "in a place where there was light illuminating from the corner of [a] house."^[16] By SPO3 Auza's and SPO1 Torcende's recollection, their checkpoint was identified by a marked vehicle and signboards.^[17] SPO3 Auza, in particular, recalled using a Commission on Elections' sign that read "STOP COMELEC CHECKPOINT."^[18] SPO3 Auza conceded that, their preparations notwithstanding, they did not bring a camera.^[19]

In the course of the evening, the team flagged down a tricycle driven by Miguelito Tamos, with Evardo and Algozo seated at the tricycle's sidecar.^[20] As SPO3 Auza recalled, "[t]hey knew right away that the two accused were on board the tricycle the moment the tricycle stopped in front of them."^[21] Further, SPO1 Torcende claimed that Evardo and Algozo "were acting suspiciously and were trembling and appeared to be pale."^[22]

SPO3 Auza allegedly saw Algozo place something in the rolled-up rain cover (*tarapal*) of the sidecar. He then went to retrieve it and recovered seven plastic sachets containing white crystalline substance. Thereafter, Evardo and Algozo were asked to disembark. Algozo allegedly tried to run, but PO1 Bongator caught him. The police asked for his wallet, which Algozo gave, and frisked him after. Upon frisking, they found 11 more plastic sachets containing white crystalline substance inside his wallet.^[23]

In the meantime, while Evardo was alighting as instructed, SPO1 Torcende allegedly saw another sachet "tucked at the edge of the garter of [Evardo's] underwear."^[24] He confiscated the sachet and frisked him afterwards. SPO3 Auza took the sachet which contained seven small packs of white crystalline substance.^[25]

The police then informed Evardo and Algozo of their constitutional rights, while SPO3 Restituto marked the seized items with Evardo's and Algozo's initials. The seven sachets found inside the rain cover were marked "JAM 1" to "JAM 7," while the 11 sachets found inside Algozo's wallet were marked "JAM 8" to "JAM 18," and the seven sachets tucked in Evardo's underwear were marked "VEL 1" to "VEL 7."^[26]

The police initially brought Evardo and Algozo to a hospital for medical check-up. Later, they were taken to the Talibon Police Station.^[27]

On March 24, 2004, P/Supt. Agas wrote a laboratory examination request. Police Officer I Jelbert Casagan of the Philippine National Police Bohol Provincial Crime Laboratory Office received the request and the seized items. Police Chief Inspector Victoria Celis De Guzman examined the contents of the sachets, which tested positive for methamphetamine hydrochloride or shabu.^[28]

Evardo and Algozo denied ownership of the seized items. They claimed that on March 23, 2004, they went to a celebration hosted by Evardo's cousin in Bagacay, Talibon. They then went home at around 7:00 p.m. and rode a tricycle hired by Julito Dajao, Algozo's friend.^[29]

Thereafter, upon passing by a police checkpoint in San Jose, the police officers flagged down the tricycle and ordered only the two of them to disembark. They were then ordered to remove their shirts, pull their pants down, and were searched with only their underwear on. Still, the officers found nothing on them.^[30]

They were directed to remain outside the tricycle while P/Supt. Agas searched it. He allegedly found sachets of shabu in the rain cover of the sidecar near Algozo's seat. The two were then brought to the police station where they were searched again. P/Supt. Agas told them that the recovered items were theirs.^[31]

In its July 23, 2012 Joint Decision,^[32] the Regional Trial Court lent greater weight to the police officers' version of events and found that the elements of the offense charged had been established. Thus, it held Evardo and Algozo guilty beyond reasonable doubt. The dispositive portion of this Decision reads:

WHEREFORE, premises considered, judgment is hereby rendered as follows:

1. In Criminal Case No. 04-1426, finding accused Justo

Algozo GUILTY BEYOND REASONABLE DOUBT for Violation of Section 11, Art II, RA 9165 for illegal possession of dangerous drug, and sentencing him to suffer the indeterminate sentence of Twelve Years and One Day imprisonment as minimum to Fifteen Years imprisonment as maximum and to pay a fine in the amount of P300,000.00

2. In Criminal Case No. 04-1427, finding accused Virgilio Evardo also GUILTY BEYOND REASONABLE DOUBT for Violation of Section 11, Art II, RA 9165 for illegal possession of dangerous drug, and sentencing him to suffer the indeterminate sentence of Twelve Years and One Day imprisonment as minimum to Fifteen Years imprisonment as maximum and to pay a fine in the amount of P300,000.00

As it appears on record that both accused are out on provisional liberty by virtue of a surety bond, the court now hereby orders the arrest of the two accused, except if they will file an appeal in these cases but subject to the discretion of this court on the sufficiency of their previous bond.

SO ORDERED.^[33]

Evardo and Algozo both appealed to the Court of Appeals.^[34] However, with Algozo's death on October 4, 2012,^[35] only Evardo was able to file his Appellant's Brief.^[36]

On March 22, 2017, the Court of Appeals rendered its Decision^[37] denying Evardo's appeal.^[38] It held that Evardo's nervous disposition, Algozo's act of inserting something in the rain cover, and the prior inclusion of both Evardo and Algozo in the drugs watch list "engendered a reasonable ground of suspicion for the police officers to believe that an offense is being committed and [Evardo] is probably guilty thereof."^[39]

The Court of Appeals found that the seizure of illegal drugs was valid under the doctrine of "stop-and-frisk" search, which was also allowed in illegal drugs cases.^[40] It added that the warrantless search and seizure were also exempted "under the rule on search of moving vehicles."^[41] It held:

To reiterate, when a vehicle is flagged down and subjected to an extensive search, such a warrantless search has been held to be valid as long as the officers conducting the search have reasonable or probable cause to believe prior to the search that they would find the instrumentality or evidence pertaining to a crime, in the vehicle to be searched.^[42] (Citation omitted)

The Court of Appeals likewise found that the defense failed to show any improper motive on the part of the prosecution witnesses, thus giving their testimonies more weight than the claims of the defense.^[43]

The dispositive portion of the Court of Appeals' Decision reads:

WHEREFORE, in view of the foregoing, the appeal is DENIED. The 23 July 2012 Joint-Decision of the Regional Trial Court of Talibon, Bohol, Branch 52, finding Virgilio Evardo y Lopena guilty of violating Section 11, Article II of R.A. No. 9165 in Criminal Case No. 04-1427 is **AFFIRMED** in *toto*.

SO ORDERED.^[44] (Emphasis in the original)

Evardo moved for reconsideration, which the Court of Appeals denied in its August 16, 2017 Resolution.^[45]

On October 10, 2017, Evardo filed a Petition for Review,^[46] assailing the March 22, 2017 Decision and the August 16, 2017 Resolution of the Court of Appeals.^[47] He claims that his arrest is illegal: that he was arrested without warrant and that none of the circumstances for a valid warrantless arrest applies to his case. Further, he emphasizes that he was merely sitting in the sidecar of the tricycle when he was apprehended, and was neither committing nor attempting to commit any crime.^[48]

Evardo notes that there was no personal knowledge on the part of the apprehending police officers that he possessed illegal drugs "since they did not personally see [him] buy the drugs in Banacon Island, and carry them."^[49] Lastly, he claims that he was not an escaped prisoner when the officers arrested him.^[50]

Evardo also asserts that the search and seizure conducted by the police against him was illegal. None of the circumstances for a valid warrantless search and seizure applies to his case. The search cannot be considered incidental to a lawful arrest, since he was searched before he was illegally arrested.^[51]

Moreover, the items recovered from him "were not in plain view and were not readily apparent and observable to the officers."^[52] Thus, the search does not fall under the plain view doctrine. Neither does the search fall under the "stop-and-frisk" doctrine. SPO3 Restituto admitted that Evardo did not seem to be carrying a dangerous weapon.^[53] Evardo also maintains that the checkpoint search was illegal for not being limited to a visual search.^[54] Considering that the search and seizure were illegal, the evidence procured should be inadmissible "for being fruits of a poisonous tree."^[55]

Evardo adds that the police officers failed to comply with the rules on the chain of custody in cases involving dangerous drugs. Neither inventory nor taking of photographs was made during the apprehension and seizure of the items. When the markings on the seized items were made, there was no representative from either the media, the National Prosecution Service, or an elected public official. Moreover, the prosecution did not offer any justifiable grounds for the arresting officers' noncompliance. Therefore, the identity and integrity of the evidence were compromised.^[56]

For resolution is the issue of whether or not petitioner Virgilio Evardo y Lopena is guilty beyond reasonable doubt of illegal possession of dangerous drugs as penalized by Section 11 of the Comprehensive Dangerous Drugs Act of 2002. Subsumed under this are the issues of: (1) whether or not the search, seizure, and