680 Phil. 447

THIRD DIVISION

[G.R. No. 185128 [Formerly UDK No. 13980], January 30, 2012]

RUBEN DEL CASTILLO @ BOY CASTILLO, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

D E C I S I O N

PERALTA, J.:

For this Court's consideration is the Petition for Review[1] on *Certiorari* under Rule 45 of Ruben del Castillo assailing the Decision[2] dated July 31, 2006 and Resolution[3] dated December 13, 2007 of the Court of Appeals (CA) in CA-G.R. CR No. 27819, which affirmed the Decision[4] dated March 14, 2003 of the Regional Trial Court (RTC), Branch 12, Cebu, in Criminal Case No. CBU-46291, finding petitioner guilty beyond reasonable doubt of violation of Section 16, Article III of Republic Act (R.A.) 6425.

The facts, as culled from the records, are the following:

Pursuant to a confidential information that petitioner was engaged in selling *shabu*, police officers headed by SPO3 Bienvenido Masnayon, after conducting surveillance and test-buy operation at the house of petitioner, secured a search warrant from the RTC and around 3 o'clock in the afternoon of September 13, 1997, the same police operatives went to Gil Tudtud St., Mabolo, Cebu City to serve the search warrant to petitioner.

Upon arrival, somebody shouted "*raid*," which prompted them to immediately disembark from the jeep they were riding and went directly to petitioner's house and cordoned it. The structure of the petitioner's residence is a two-storey house and the petitioner was staying in the second floor. When they went upstairs, they met petitioner's wife and informed her that they will implement the search warrant. But before they can search the area, SPO3 Masnayon claimed that he saw petitioner run towards a small structure, a nipa hut, in front of his house. Masnayon chased him but to no avail, because he and his men were not familiar with the entrances and exits of the place.

They all went back to the residence of the petitioner and closely guarded the place where the subject ran for cover. SPO3 Masnayon requested his men to get a *barangay tanod* and a few minutes thereafter, his men returned with two *barangay tanods*.

In the presence of the *barangay tanod*, Nelson Gonzalado, and the elder sister of petitioner named Dolly del Castillo, searched the house of petitioner including the nipa hut where the petitioner allegedly ran for cover. His men who searched the residence of the petitioner found nothing, but one of the *barangay tanods* was able

to confiscate from the nipa hut several articles, including four (4) plastic packs containing white crystalline substance. Consequently, the articles that were confiscated were sent to the PNP Crime Laboratory for examination. The contents of the four (4) heat- sealed transparent plastic packs were subjected to laboratory examination, the result of which proved positive for the presence of *methamphetamine hydrochloride*, or *shabu*.

Thus, an Information was filed before the RTC against petitioner, charging him with violation of Section 16, Article III of R.A. 6425, as amended. The Information[5] reads:

> That on or about the 13th day of September 1997, at about 3:00 p.m. in the City of Cebu, Philippines and within the jurisdiction of this Honorable Court, the said accused, with deliberate intent, did then and there have in his possession and control four (4) packs of white crystalline powder, having a total weight of 0.31 gram, locally known as "shabu," all containing methamphetamine hydrochloride, a regulated drug, without license or prescription from any competent authority.
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> CONTRARY TO LAW.[6]

During arraignment, petitioner, with the assistance of his counsel, pleaded not guilty.[7] Subsequently, trial on the merits ensued.

To prove the earlier mentioned incident, the prosecution presented the testimonies of SPO3 Bienvenido Masnayon, PO2 Milo Arriola, and Forensic Analyst, Police Inspector Mutchit Salinas.

The defense, on the other hand, presented the testimonies of petitioner, Jesusa del Castillo, Dalisay del Castillo and Herbert Aclan, which can be summarized as follows:

On September 13, 1997, around 3 o'clock in the afternoon, petitioner was installing the electrical wirings and airconditioning units of the Four Seasons Canteen and Beauty Parlor at Wacky Bldg., Cabancalan, Cebu. He was able to finish his job around 6 o'clock in the evening, but he was engaged by the owner of the establishment in a conversation. He was able to go home around 8:30-9 o'clock in the evening. It was then that he learned from his wife that police operatives searched his house and found nothing. According to him, the small structure, 20 meters away from his house where they found the confiscated items, was owned by his older brother and was used as a storage place by his father.

After trial, the RTC found petitioner guilty beyond reasonable of the charge against him in the Information. The dispositive portion of the Decision reads:

> WHEREFORE, premises considered, this Court finds the accused Ruben del Castillo "alyas Boy Castillo," GUILTY of violating Section 16, Article III, Republic Act No. 6425, as amended. There being no mitigating nor aggravating circumstances proven before this Court, and applying the Indeterminate Sentence Law, he is sentenced to suffer the penalty of Six

(6) Months and One (1) Day as Minimum and Four (4) Years and Two (2) Months as Maximum of *Prision Correccional*.

The four (4) small plastic packets of white crystalline substance having a total weight of 0.31 gram, positive for the presence of methamphetamine hydrochloride, are ordered confiscated and shall be destroyed in accordance with the law.

SO ORDERED.[8]

Aggrieved, petitioner appealed his case with the CA, but the latter affirmed the decision of the RTC, thus:

WHEREFORE, the challenged Decision is AFFIRMED *in toto* and the appeal is DISMISSED, with costs against accused-appellant.

SO ORDERED.[9]

After the motion for reconsideration of petitioner was denied by the CA, petitioner filed with this Court the present petition for *certiorari* under Rule 45 of the Rules of Court with the following arguments raised:

1. THE COURT OF APPEALS ERRED IN ITS APPLICATION OF THE PROVISIONS OF THE CONSTITUTION, THE RULES OF COURT AND ESTABLISHED JURISPRUDENCE *VIS-A-VIS* VALIDITY OF SEARCH WARRANT NO. 570-9-1197-24;

2. THE COURT OF APPEALS ERRED IN RULING THAT THE FOUR (4) PACKS OF WHITE CRYSTALLINE POWDER ALLEGEDLY FOUND ON THE FLOOR OF THE NIPA HUT OR STRUCTURE ARE ADMISSIBLE IN EVIDENCE AGAINST THE PETITIONER, NOT ONLY BECAUSE THE SAID COURT SIMPLY PRESUMED THAT IT WAS USED BY THE PETITIONER OR THAT THE PETITIONER RAN TO IT FOR COVER WHEN THE SEARCHING TEAM ARRIVED AT HIS RESIDENCE, BUT ALSO, PRESUMING THAT THE SAID NIPA HUT OR STRUCTURE WAS INDEED USED BY THE PETITIONER AND THE FOUR (4) PACKS OF WHITE CRYSTALLINE POWDER WERE FOUND THEREAT. THE SUBJECT FOUR (4) PACKS OF WHITE CRYSTALLINE POWDER ARE FRUITS OF THE POISONOUS TREE; and

3. THE COURT OF APPEALS ERRED IN ITS APPLICATION OF THE ELEMENT OF "POSSESSION" AS AGAINST THE PETITIONER, AS IT WAS IN VIOLATION OF THE ESTABLISHED JURISPRUDENCE ON THE MATTER. HAD THE SAID COURT PROPERLY APPLIED THE ELEMENT IN QUESTION, IT COULD HAVE BEEN ASSAYED THAT THE SAME HAD NOT BEEN PROVEN.[10]

The Office of the Solicitor General (OSG), in its Comment dated February 10, 2009,

enumerated the following counter-arguments:

I

SEARCH WARRANT No. 570-9-11-97-24 issued by Executive Judge Priscilla S. Agana of Branch 24, Regional Trial Court of Cebu City is valid.

II

The four (4) packs of shabu seized inside the shop of petitioner are admissible in evidence against him.

III

The Court of Appeals did not err in finding him guilty of illegal possession of prohibited drugs.[11]

Petitioner insists that there was no probable cause to issue the search warrant, considering that SPO1 Reynaldo Matillano, the police officer who applied for it, had no personal knowledge of the alleged illegal sale of drugs during a test-buy operation conducted prior to the application of the same search warrant. The OSG, however, maintains that the petitioner, aside from failing to file the necessary motion to quash the search warrant pursuant to Section 14, Rule 127 of the Revised Rules on Criminal Procedure, did not introduce clear and convincing evidence to show that Masnayon was conscious of the falsity of his assertion or representation.

Anent the second argument, petitioner asserts that the nipa hut located about 20 meters away from his house is no longer within the "permissible area" that may be searched by the police officers due to the distance and that the search warrant did not include the same nipa hut as one of the places to be searched. The OSG, on the other hand, argues that the constitutional guaranty against unreasonable searches and seizure is applicable only against government authorities and not to private individuals such as the *barangay tanod* who found the folded paper containing packs of shabu inside the nipa hut.

As to the third argument raised, petitioner claims that the CA erred in finding him guilty beyond reasonable doubt of illegal possession of prohibited drugs, because he could not be presumed to be in possession of the same just because they were found inside the nipa hut. Nevertheless, the OSG dismissed the argument of the petitioner, stating that, when prohibited and regulated drugs are found in a house or other building belonging to and occupied by a particular person, the presumption arises that such person is in possession of such drugs in violation of law, and the fact of finding the same is sufficient to convict.

This Court finds no merit on the first argument of petitioner.

The requisites for the issuance of a search warrant are: (1) probable cause is present; (2) such probable cause must be determined personally by the judge; (3) the judge must examine, in writing and under oath or affirmation, the complainant and the witnesses he or she may produce; (4) the applicant and the witnesses

testify on the facts personally known to them; and (5) the warrant specifically describes the place to be searched and the things to be seized.[12] According to petitioner, there was no probable cause. Probable cause for a search warrant is defined as such facts and circumstances which would lead a reasonably discreet and prudent man to believe that an offense has been committed and that the objects sought in connection with the offense are in the place sought to be searched.[13] A finding of probable cause needs only to rest on evidence showing that, more likely than not, a crime has been committed and that it was committed by the accused. Probable cause demands more than bare suspicion; it requires less than evidence which would justify conviction.[14] The judge, in determining probable cause, is to consider the totality of the circumstances made known to him and not by a fixed and rigid formula,[15] and must employ a flexible, totality of the circumstances standard.[16] The existence depends to a large degree upon the finding or opinion of the judge conducting the examination. This Court, therefore, is in no position to disturb the factual findings of the judge which led to the issuance of the search warrant. A magistrate's determination of probable cause for the issuance of a search warrant is paid great deference by a reviewing court, as long as there was substantial basis for that determination.[17] Substantial basis means that the questions of the examining judge brought out such facts and circumstances as would lead a reasonably discreet and prudent man to believe that an offense has been committed, and the objects in connection with the offense sought to be seized are in the place sought to be searched.[18] A review of the records shows that in the present case, a substantial basis exists.

With regard to the second argument of petitioner, it must be remembered that the warrant issued must particularly describe the place to be searched and persons or things to be seized in order for it to be valid. A designation or description that points out the place to be searched to the exclusion of all others, and on inquiry unerringly leads the peace officers to it, satisfies the constitutional requirement of definiteness.[19] In the present case, Search Warrant No. 570-9-1197-24[20] specifically designates or describes the residence of the petitioner as the place to be searched. Incidentally, the items were seized by a *barangay tanod* in a nipa hut, 20 meters away from the residence of the petitioner. The confiscated items, having been found in a place other than the one described in the search warrant, can be considered as fruits of an invalid warrantless search, the presentation of which as an evidence is a violation of petitioner's constitutional guaranty against unreasonable searches and seizure. The OSG argues that, assuming that the items seized were found in another place not designated in the search warrant, the same items should still be admissible as evidence because the one who discovered them was a *barangay tanod* who is a private individual, the constitutional guaranty against unreasonable searches and seizure being applicable only against government authorities. The contention is devoid of merit.

It was testified to during trial by the police officers who effected the search warrant that they asked the assistance of the *barangay tanods*, thus, in the testimony of SPO3 Masnayon:

> Fiscal Centino:
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> Q For how long did the chase take place?