

## FIRST DIVISION

[ G.R. No. 153087, August 07, 2003 ]

**BERNARD R. NALA, PETITIONER, VS. JUDGE JESUS M. BARROSO, JR., PRESIDING JUDGE, REGIONAL TRIAL COURT, BRANCH 10, 10<sup>TH</sup> JUDICIAL REGION, MALAYBALAY CITY, RESPONDENT.**

### D E C I S I O N

**YNARES-SANTIAGO, J.:**

In determining the existence of probable cause for the issuance of a search warrant, the examining magistrate must make probing and exhaustive, not merely routine or *pro forma* examination of the applicant and the witnesses.<sup>[1]</sup> Probable cause must be shown by the best evidence that could be obtained under the circumstances. The introduction of such evidence is necessary especially where the issue is the existence of a negative ingredient of the offense charged, e.g., the absence of a license required by law.<sup>[2]</sup>

This is a petition for certiorari under Rule 65 of the Rules of Court, seeking to annul the October 18, 2001<sup>[3]</sup> and February 15, 2002<sup>[4]</sup> Orders<sup>[5]</sup> of the Regional Trial Court of Malaybalay City, Branch 10, which denied petitioner's Omnibus Motion to Quash<sup>[6]</sup> Search and Seizure Warrant No. 30-01.<sup>[7]</sup>

On June 25, 2001, PO3 Macrino L. Alcoser applied for the issuance of a warrant to search the person and residence of petitioner Bernard R. Nala, who was referred to in the application as "*Rumolo<sup>[8]</sup> Nala alias Long<sup>[9]</sup> of 'Purok 4, Poblacion, Kitaotao, Bukidnon.'*"<sup>[10]</sup> The application was filed in connection with petitioner's alleged illegal possession of one caliber .22 magnum and one 9 mm. pistol in violation of Republic Act No. 8294, which amended Presidential Decree No. 1866, or the law on Illegal Possession of Firearms. On the same day, after examining Alcoser and his witness Ruel Nalagon, respondent Presiding Judge of RTC of Malaybalay City, Branch 10, issued Search and Seizure Warrant No. 30-01, against "*Romulo Nala alias Lolong Nala who is said to be residing at Purok 4, Poblacion, Kitaotao, Bukidnon.*"

At around 6:30 in the morning of July 4, 2001, Alcoser and other police officers searched petitioner's house and allegedly seized the following articles, to wit -

- 1- one piece caliber .38 revolver (snub-nose) with Serial Number 1125609
- 1- one pc. fragmentation grenade (cacao type)
- 1- one pc. .22 long barrel
- 5- pcs live ammunition for caliber .38 revolver

-4- four pcs. of disposable lighter and unestimated numbers of cellophane used for packing of shabu<sup>[11]</sup>

On July 5, 2001, Criminal Cases Nos. 10943-2001-P and 10944-2001-P for illegal possession of firearms, ammunitions and explosives were filed against the petitioner before the 5<sup>th</sup> Municipal Circuit Trial Court of Kitaotao, Bukidnon.<sup>[12]</sup>

On August 8, 2001, petitioner filed an Omnibus Motion<sup>[13]</sup> seeking to - (1) quash Search and Seizure Warrant No. 30-01; (2) declare inadmissible for any purpose the items allegedly seized under the said warrant; and (3) direct the release of the air rifle seized by the police officers.

Respondent judge denied the Omnibus Motion to Quash but ordered the return of the air rifle to petitioner. As to the validity of the search warrant, respondent found that probable cause was duly established from the deposition and examination of witness Ruel Nalagon and the testimony of PO3 Macrino L. Alcoser who personally conducted a surveillance to confirm the information given by Nalagon. The fact that the items seized were not exactly the items listed in the warrant does not invalidate the same because the items seized bear a direct relation to the crime of illegal possession of firearms. Respondent judge also found that petitioner was sufficiently identified in the warrant although his first name was erroneously stated therein as "Romulo" and not "Bernard", considering that the warrant was couched in terms that would make it enforceable against the person and residence of petitioner and no other. The dispositive portion of the questioned Order reads:

WHEREFORE, finding the Omnibus Motion to be without merit, the same is hereby DENIED. However, as to the questioned Air Rifle, the same is allowed to be withdrawn and ordered returned to herein movant.

SO ORDERED.<sup>[14]</sup>

Petitioner filed a motion for reconsideration but the same was denied on February 15, 2002.<sup>[15]</sup> Hence, he filed the instant petition alleging that respondent judge committed grave abuse of discretion in issuing the questioned orders.

The issues for resolution are as follows: (1) Was petitioner sufficiently described in the search and seizure warrant? (2) Was there probable cause for the issuance of a search and seizure warrant against petitioner? and (3) Whether or not the firearms and explosive allegedly found in petitioner's residence are admissible in evidence against him even though said firearms were not listed in the search and seizure warrant.

At the outset, it must be noted that the instant petition for certiorari was filed directly with this Court in disregard of the rule on hierarchy of courts. In the interest of substantial justice and speedy disposition of cases, however, we opt to take cognizance of this petition in order to address the urgency and seriousness of the constitutional issues raised.<sup>[16]</sup> In rendering decisions, courts have always been conscientiously guided by the norm that on the balance, technicalities take a backseat against substantive rights, and not the other way around. Thus, if the application of the Rules would tend to frustrate rather than promote justice, it is

always within our power to suspend the rules, or except a particular case from its operation.<sup>[17]</sup>

Article III, Section 2 of the Constitution guarantees every individual the right to personal liberty and security of homes against unreasonable searches and seizures, viz:

The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.

The purpose of the constitutional provision against unlawful searches and seizures is to prevent violations of private security in person and property, and unlawful invasion of the sanctity of the home, by officers of the law acting under legislative or judicial sanction, and to give remedy against such usurpations when attempted.<sup>[18]</sup>

Corollarily, Rule 126, Sections 4 and 5 of the 2000 Rules on Criminal Procedure provide for the requisites for the issuance of a search warrant, to wit:

SEC. 4. **Requisites for issuing search warrant.** - A search warrant shall not issue except upon probable cause in connection with one specific offense to be determined personally by the judge after examination under oath or affirmation of the complainant and the witness he may produce, and particularly describing the place to be searched and the things to be seized which may be anywhere in the Philippines.

SEC. 5. **Examination of complainant; record.** - The judge must, before issuing the warrant, personally examine in the form of searching questions and answers, in writing and under oath, the complainant and the witnesses he may produce on facts personally known to them and attach to the record their sworn statements, together with the affidavits submitted.

More simply stated, the requisites of a valid search warrant are: (1) probable cause is present; (2) such presence is determined personally by the judge; (3) the complainant and the witnesses he or she may produce are personally examined by the judge, in writing and under oath or affirmation; (4) the applicant and the witnesses testify on facts personally known to them; and (5) the warrant specifically describes the person and place to be searched and the things to be seized.<sup>[19]</sup>

On the first issue, the failure to correctly state in the search and seizure warrant the first name of petitioner, which is "Bernard" and not "Romulo" or "Rumolo", does not invalidate the warrant because the additional description "*alias Lolong Nala who is said to be residing at Purok 4, Poblacion, Kitaotao, Bukidnon*" sufficiently enabled the police officers to locate and identify the petitioner. What is prohibited is a warrant against an unnamed party, and not one which, as in the instant case,

contains a *descriptio personae* that will enable the officer to identify the accused without difficulty.<sup>[20]</sup>

The "probable cause" for a valid search warrant has been 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 objects sought in connection with the offense are in the place sought to be searched. This probable cause must be shown to be within the personal knowledge of the complainant or the witnesses he may produce and not based on mere hearsay.<sup>[21]</sup> In determining its existence, the examining magistrate must make a probing and exhaustive, not merely routine or *pro forma* examination of the applicant and the witnesses.<sup>[22]</sup> Probable cause must be shown by the best evidence that could be obtained under the circumstances. On the part of the applicant and witnesses, the introduction of such evidence is necessary especially where the issue is the existence of a negative ingredient of the offense charged, *e.g.*, the absence of a license required by law.<sup>[23]</sup> On the other hand, the judge must not simply rehash the contents of the affidavits but must make his own extensive inquiry on the existence of such license, as well as on whether the applicant and the witnesses have personal knowledge thereof.

In *Paper Industries Corporation of the Philippines (PICOP) v. Asuncion*,<sup>[24]</sup> we declared as void the search warrant issued by the trial court in connection with the offense of illegal possession of firearms, ammunitions and explosives, on the ground, *inter alia*, of failure to prove the requisite probable cause. The applicant and the witness presented for the issuance of the warrant were found to be without personal knowledge of the lack of license to possess firearms of the management of PICOP and its security agency. They likewise did not testify as to the absence of license and failed to attach to the application a "no license certification" from the Firearms and Explosives Office of the Philippine National Police. Thus -

Bacolod appeared during the hearing and was extensively examined by the judge. But his testimony showed that he did not have personal knowledge that the petitioners, in violation of PD 1866, were not licensed to possess firearms, ammunitions or explosives...

X X X                      X X X                      X X X

When questioned by the judge, Bacolod stated merely that he believed that the PICOP security guards had no license to possess the subject firearms. This, however, does not meet the requirement that a witness must testify on his personal knowledge, not belief.

X X X                      X X X                      X X X

Moreover, Bacolod failed to affirm that none of the firearms seen inside the PICOP compound was licensed. Bacolod merely declared that the security agency and its guards were not licensed. He also said that some of the firearms were owned by PICOP. Yet, he made no statement before the trial court that PICOP, aside from the security agency, had no license to possess those firearms. Worse, the applicant and his witnesses inexplicably failed to attach to the application a copy of the

aforementioned "no license" certification from the Firearms and Explosives Office (FEO) of the PNP, or to present it during the hearing. Such certification could have been easily obtained, considering that the FEO was located in Camp Crame where the unit of Bacolod was also based....<sup>[25]</sup>

In the case at bar, the search and seizure warrant was issued in connection with the offense of illegal possession of firearms, the elements of which are - (1) the existence of the subject firearm; and (2) the fact that the accused who owned or possessed it does not have the license or permit to possess the same.<sup>[26]</sup> Probable cause as applied to illegal possession of firearms would therefore be such facts and circumstances which would lead a reasonably discreet and prudent man to believe that a person is in possession of a firearm and that *he does not have the license or permit to possess the same*. Nowhere, however, in the affidavit and testimony of witness Ruel Nalagon nor in PO3 Macrino L. Alcoser's application for the issuance of a search warrant was it mentioned that petitioner had no license to possess a firearm. While Alcoser testified before the respondent judge that the firearms in the possession of petitioner are not licensed, this does not qualify as "*personal knowledge*" but only "*personal belief*" because neither he nor Nalagon verified, much more secured, a certification from the appropriate government agency that petitioner was not licensed to possess a firearm. This could have been the best evidence obtainable to prove that petitioner had no license to possess firearms and ammunitions, but the police officers failed to present the same.

Regrettably, even the examination conducted by the respondent judge on Nalagon and Alcoser fell short of the required probing and exhaustive inquiry for the determination of the existence of probable cause. Thus -

COURT: [To witness **Ruel Nalagon**]

Q I am showing you this document/sworn statement of Ruel Nala[gon] given to PO3 Rodrigo Delfin, Investigator, SCOT/PDEU Bukidnon Police Provincial Office, Camp Ramon Onahon, Malaybalay City on or about 12:30 in the afternoon of June 25, 2001, in the presence of PO3 Macrino Alcoser, Operative of Special Case Operation Team. Are you the same Ruel Nalagon who has given a statement before the above-named police officer?

A Yes, Sir.

Q You have given a statement before the above--named police officer or Investigator that you have personal knowledge that a certain Romulo Nala in Purok 4, Poblacion, Kitaotao, Bukidnon has in his possession a .22 magnum pistol and 9MM pistol[?] Why and how do you know that he has in his possession such pistols?

A Because I personally saw and witnessed him bringing or carrying said pistols.

Q Where did you see him bringing or carrying said pistols?

A I saw him personally in the public market of Kitaotao, Bukidnon. I also witnessed him firing said pistol especially when he is drunk.