

SECOND DIVISION

[G.R. No. 144037, September 26, 2003]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. NOEL
TUDTUD Y PAYPA AND DINDO BOLONG Y NARET, ACCUSED-
APPELLANTS.**

D E C I S I O N

TINGA, J.:

.... It is desirable that criminals should be detected, and to that end that all available evidence should be used. It also is desirable that the government should not itself foster and pay for other crimes, when they are the means by which the evidence is to be obtained. If it pays its officers for having got evidence by crime, I do not see why it may not as well pay them for getting it in the same way, and I can attach no importance to protestations of disapproval if it knowingly accepts and pays and announces that it will pay for the fruits. We have to choose, and for my part I think it a less evil that some criminals should escape than that the government should play an ignoble part.

So wrote Justice Oliver Wendell Holmes in *Olmstead v. U.S.*^[1] On this occasion, this Court is made to choose between letting suspected criminals escape or letting the government play an ignoble part.

Sometime during the months of July and August 1999, the Toril Police Station, Davao City received a report from a "civilian asset" named Bobong Solier about a certain Noel Tudit. ^[2] Solier related that his neighbors have been complaining about Tudit, who was allegedly responsible for the proliferation of marijuana in their area. ^[3]

Reacting to the report, PO1 Ronald Desierto, PO1 Ramil Floreta and their superior, SPO1 Villalonghan, ^[4] all members of the Intelligence Section of the Toril Police Station, conducted surveillance in Solier's neighborhood in Sapa, Toril, Davao City. ^[5] For five days, they gathered information and learned that Tudit was involved in illegal drugs. ^[6] According to his neighbors, Tudit was engaged in selling marijuana. ^[7]

On August 1, 1999, Solier informed the police that Tudit had headed to Cotabato and would be back later that day with new stocks of marijuana. ^[8] Solier described Tudit as big-bodied and short, and usually wore a hat. ^[9] At around 4:00 in the afternoon that same day, a team composed of PO1 Desierto, PO1 Floreta and SPO1 Villalonghan posted themselves at the corner of Saipon and McArthur Highway to await Tudit's arrival. ^[10] All wore civilian clothes. ^[11]

About 8:00 later that evening, two men disembarked from a bus and helped each other carry a carton^[12] marked "King Flakes."^[13] Standing some five feet away from the men, PO1 Desierto and PO1 Floreta observed that one of the men fit Tuddud's description.^[14] The same man also toted a plastic bag.^[15]

PO1 Floreta and PO1 Desierto then approached the suspects and identified themselves as police officers.^[16] PO1 Desierto informed them that the police had received information that stocks of illegal drugs would be arriving that night.^[17] The man who resembled Tuddud's description denied that he was carrying any drugs.^[18] PO1 Desierto asked him if he could see the contents of the box.^[19] Tuddud obliged, saying, "it was alright."^[20] Tuddud opened the box himself as his companion looked on.^[21]

The box yielded pieces of dried fish, beneath which were two bundles, one wrapped in a striped plastic bag^[22] and another in newspapers.^[23] PO1 Desierto asked Tuddud to unwrap the packages.^[24] They contained what seemed to the police officers as marijuana leaves.^[25]

The police thus arrested Tuddud and his companion, informed them of their rights and brought them to the police station.^[26] The two did not resist.^[27]

The confiscated items were turned over to the Philippine National Police (PNP) Crime Laboratory for examination.^[28] Forensic tests conducted by Police Chief Inspector Noemi Austero, forensic chemist of the PNP Crime Laboratory, Region XI, on specimens taken from the confiscated items confirmed the police officers' suspicion. The plastic bag contained 3,200 grams of marijuana leaves while the newspapers contained another 890 grams.^[29] Police Chief Inspector Austero reduced her findings in her report, Physical Sciences Report No. D-220-99 dated 2 August 1999.^[30]

Noel Tuddud and his companion, Dindo Bulong, were subsequently charged^[31] before the Regional Trial Court (RTC) of Davao City with illegal possession of prohibited drugs.^[32] Upon arraignment, both accused pleaded not guilty.^[33] The defense, however, reserved their right to question the validity of their arrest and the seizure of the evidence against them.^[34]

Trial ensued thereafter.

The prosecution presented five witnesses, namely, arresting officers PO1 Desierto and PO1 Floreta, their civilian informant Bobong Solier, forensic chemist Police Chief Inspector Noemi Austero, and SPO3 Nicolas Algabre, exhibit custodian of the PNP Crime Laboratory. Said witnesses testified to the foregoing narration of facts.

The accused, denying the charges against them, cried frame-up.

Noel Tuddud recalled that on August 1, 1999 he had gone to Kabacan, North Cotabato to sell pairs of Levi's pants, which was his "sideline."^[35] At about 5:00 in the afternoon, he returned to Davao City by bus.^[36] Upon reaching Toril, Tuddud,

along with less than ten passengers, got down the bus.^[37]

Suddenly, a man who identified himself as a police officer approached him, pointing a .38 caliber revolver.^[38] The man told him not to run.^[39] Tudtud raised his arms and asked, "Sir, what is this about?"^[40] The man answered that he would like to inspect the plastic bag Tudtud was carrying, and instructed Tudtud to open the bag, which revealed several pairs of Levi's pants.^[41]

The man then directed Tudtud to open a carton box some two meters away.^[42] According to Tudtud, the box was already there when he disembarked the bus.^[43] Tudtud told the man the box was not his, but proceeded to open it out of fear after the man again pointed his revolver at him.^[44] Tudtud discovered pieces of dried fish, underneath which was something wrapped in cellophane.^[45]

"What is that?" the man asked.^[46] Tudtud replied that he did not know.^[47] Without even unwrapping the cellophane, the man said it was marijuana and abruptly handcuffed Tudtud.^[48]

Simultaneously, another man was pointing a firearm at Dindo Bolong at the other side of the street, some eight meters from Tudtud.^[49]

Bolong recounted that he was on his way to a relative in Daliao after attending a cousin's wedding in Hagonoy, Davao del Sur when he was accosted.^[50] After alighting the bus, Bolong crossed the street.^[51] Someone then approached him and pointed a gun at him.^[52] The man ordered him not to move and handcuffed him.^[53] Bolong asked why he was being arrested but the man just told him to go with them.^[54]

The suspects were then taken to the police station where, they would later claim, they met each other for the first time.^[55]

Assailing the credibility of informant Bobong Solier, the defense offered the testimonies of Felicia Julaton,^[56] Branch 3 Clerk of Court, Claudio Bohevia,^[57] Branch 7 Clerk of Court, and Mercedita Abunda,^[58] Branch 9 Utility Clerk, all of the Davao City Municipal Trial Circuit Court. They testified and presented court documents showing that one "Bobo" or "Bobong" Ramirez was charged in their respective branches with various crimes, specifically, light threats, less serious physical injuries and robbery. The defense asserted that the "Bobo" or "Bobong" Ramirez accused in these cases is the same person as the informant Bobong Solier.^[59]

Swayed by the prosecution's evidence beyond reasonable doubt, the RTC rendered judgment convicting both accused as charged and sentencing them to suffer the penalty of *reclusion perpetua* and to pay a fine of P500,000.00.^[60]

On appeal, Noel Tudtud and Dindo Bolong assign, among other errors, the admission in evidence of the marijuana leaves, which they claim were seized in violation of their right against unreasonable searches and seizures.

The right against unreasonable searches and seizures is secured by Section 2, Article III of the Constitution, which states:

SEC. 2. The right of the people to be secured 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 places to be searched and the persons or things to be seized.

The rule is that a search and seizure must be carried out through or with a judicial warrant; otherwise, such search and seizure becomes "unreasonable" within the meaning of the above-quoted constitutional provision, and any evidence secured thereby, will be inadmissible in evidence "for any purpose in any proceeding."^[61] Section 3 (2), Article III of the Constitution explicitly provides:

(2) Any evidence obtained in violation of... the preceding section shall be inadmissible for any purpose in any proceeding.

The proscription in Section 2, Article III, however, covers only "unreasonable" searches and seizures. The following instances are not deemed "unreasonable" even in the absence of a warrant:

1. *Warrantless search incidental to a lawful arrest.* (Sec. 12, Rule 126 of the Rules of Court and prevailing jurisprudence);
2. *Search of evidence in "plain view."* The elements are: (a) a prior valid intrusion based on the valid warrantless arrest in which the police are legally present in the *pursuit* of their official duties; (b) the evidence was inadvertently discovered by the police who have the right to be where they are; (c) the evidence must be immediately apparent; (d) "plain view" justified mere seizure of evidence without further search;
3. *Search of a moving vehicle.* Highly regulated by the government, the vehicle's inherent mobility reduces expectation of privacy especially when its transit in public thoroughfares furnishes a highly reasonable suspicion amounting to probable cause that the occupant committed a criminal activity;
4. *Consented warrantless search;*
5. *Customs search;*
6. *Stop and Frisk; and*
7. *Exigent and emergency circumstances.*^[62]

The RTC justified the warrantless search of appellants' belongings under the first exception, as a search incident to a lawful arrest. It cited as authorities this Court's

rulings in *People v. Claudio*,^[63] *People v. Tangliben*,^[64] *People v. Montilla*,^[65] and *People v. Valdez*.^[66] The Office of the Solicitor General (OSG), in arguing for the affirmance of the appealed decision, invokes the cases of *People v. Maspil, Jr.*,^[67] *People v. Malmstedt*,^[68] and *People v. Bagista*.^[69]

A search incidental to a lawful arrest is sanctioned by the Rules of Court. Prior to its revision in 2000, Section 12,^[70] Rule 126 of said Rules read as follows:

SEC. 12. *Search incident to lawful arrest.* – A person lawfully arrested may be searched for dangerous weapons or anything which may be used as proof of the commission of an offense, without a search warrant.

Section 5 (a), Rule 113 of the Rules, in turn, allows warrantless arrests:

SEC. 5. *Arrest without warrant; when lawful.* – A peace officer or a private person may, without a warrant, arrest a person:

(a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense;

....

It is significant to note that the search in question preceded the arrest. Recent jurisprudence holds that the arrest must precede the search; the process cannot be reversed.^[71] Nevertheless, a search substantially contemporaneous with an arrest can precede the arrest if the police have probable cause to make the arrest at the outset of the search.^[72] The question, therefore, is whether the police in this case had probable cause to arrest appellants. Probable cause has been defined as:

an actual belief or reasonable grounds of suspicion. The grounds of suspicion are reasonable when, in the absence of actual belief of the arresting officers, the suspicion that the person to be arrested is probably guilty of committing the offense, is based on actual facts, *i.e.*, supported by circumstances sufficiently strong in themselves to create the probable cause of guilt of the person to be arrested. A reasonable suspicion therefore must be founded on probable cause, coupled with good faith of the peace officers making the arrest.^[73]

The long-standing rule in this jurisdiction, applied with a great degree of consistency, is that "reliable information" alone is not sufficient to justify a warrantless arrest under Section 5 (a), Rule 113. The rule requires, in addition, that the accused perform some overt act that would indicate that he "has committed, is actually committing, or is attempting to commit an offense."

In the leading case of *People v. Burgos*,^[74] this Court held that "the officer arresting a person who has just committed, is committing, or is about to commit an offense must have **personal knowledge** of that fact. The offense must also be committed in his presence or within his view."^[75] In *Burgos*, the authorities obtained information that the accused had forcibly recruited one Cesar Masamlok as member of the New People's Army, threatening the latter with a firearm. Upon finding the accused, the arresting team searched his house and discovered a gun as well as