

THIRD DIVISION

[G.R. No. 116720, October 02, 1997]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROEL
ENCINADA, ACCUSED-APPELLANT.
D E C I S I O N**

PANGANIBAN, J.:

In acquitting the appellant, the Court reiterates the constitutional proscription that evidence (in this case, prohibited drugs) seized without a valid search warrant is inadmissible in any proceeding. A yield of incriminating evidence will not legitimize an illegal search. Indeed, the end never justifies the means.

The Case

This principle is stressed in this appeal from the Judgment,^[1] promulgated on July 15, 1994 by the Regional Trial Court of Surigao City, Branch 32,^[2] in Criminal Case No. 3668, convicting Appellant Roel Encinada of illegal transportation of prohibited drugs under Section 4 of Republic Act No. 6425, as amended by Batas Pambansa Blg. 179.

An Information,^[3] dated May 22, 1992, was filed by Third Asst. Surigao City Prosecutor Virgilio M. Egay charging appellant of said crime allegedly committed as follows:

That on or about May 21, 1992, in the City of Surigao, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, in gross disregard of the prohibition of the provisions of Republic Act No. 6425 as amended by Batas Pambansa Bilang 179, did then and there willfully, unlawfully and feloniously have in his possession, custody and control dried marijuana leaves weighing 800 grams, more or less, which he transported to Surigao City from Cebu City aboard a passenger ship, well knowing that such acts are expressly prohibited by law.”

Before arraignment, appellant, assisted by Counsel Antonio Casurra, offered to plead guilty to a lesser offense, i.e., illegal possession of prohibited drugs.^[4] The trial court requested the prosecution to study the offer,^[5] but the records do not show any agreement on such proposal.

Upon his arraignment, appellant pleaded “not guilty” to the charge.^[6] After the prosecution presented its evidence, the defense filed, with leave of court,^[7] a “Demurrer to Evidence” dated September 1, 1993,^[8] questioning the admissibility

of the evidence which allegedly was illegally seized from appellant. The court a quo denied the motion, ruling:^[9]

For resolution is the demurrer to evidence dated September 1, 1993 of the accused, Roel Encinada, praying that he be acquitted of the crime charged on the ground of the inadmissibility of the evidence for the prosecution consisting of the marijuana (seized) from him by the police. The accused raised the following issues, to wit: (1) Whether the arrest and search of the accused without a warrant would fall under the doctrine of warrantless search as an incident to a lawful arrest; and, (2) Whether the subject marijuana is admissible in evidence against the accused.

x x x

x x x

x x x

A scrutiny of the evidence for the prosecution shows that the events leading to the arrest of the accused started when SPO4 Nicolas Bolonia, chief of the PNP vice control section, received a tip from his informer that the accused, Roel Encinada would be arriving on board the M/V Sweet Pearl at about seven o'clock in the morning of May 21, 1992. On cross-examination SPO4 Bolonia testified that the information was given to him by his asset at about four o'clock in the afternoon of May 20, 1992. After receiving the tip he relayed the information to SPO4 Cipriano Iligan, Jr., PNP chief of intelligence. SPO4 Bolonia further declared that he would have applied for a search warrant but there was simply no time for it.

x x x

x x x

x x x

In the later case of *People vs. Tangliben* (184 SCRA 220) the Supreme Court modified its ruling in the *Aminuddin* case when it held that the arrest and search is lawful when the police had to act quickly and there was no more time to secure a search warrant. It is noted that the tip was given to SPO4 Bolonia by his informant at about the closing time of the offices of the various courts. He still had to inform SPO4 Iligan in order to coordinate with him. The boat carrying the accused was scheduled to dock in Surigao City at seven o'clock the following morning when the courts had not yet opened.

It is therefore quite obvious that the police did not have enough time to apply for a search warrant in the interim. The police cannot be faulted for acting on the tip and for stopping and searching the accused even without a warrant.

In the case at bar, the accused was caught in flagrante delicto in actual possession of the marijuana. The search made upon his personal effects falls squarely under paragraph (a) of Rule 113, Section 5 of the 1985

Rules on Criminal Procedure which allows a warrantless search as an incident to a lawful arrest (People vs. Malmstedt, 198 SCRA 401).

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x x x x

x x x x

WHEREFORE, premises considered, the demurrer to evidence in question is denied for lack of merit."

After trial in due course, the assailed Judgment was rendered, the decretal portion of which reads:

WHEREFORE, premises considered, the Court finds the accused, Roel Encinada, guilty beyond reasonable doubt of the violation of Section 4, Article II, of Republic Act No. 6425 as amended by Batas Pambansa Bilang 179, and hereby sentences him to suffer the penalty of life imprisonment and to pay a fine of twenty thousand pesos (P20,000.00) without subsidiary imprisonment in case of insolvency; and to pay the costs.

The marijuana (Exhibit B) involved in this case is hereby forfeited to the government to be destroyed or disposed of pursuant to present rules and regulations. The two plastic chairs (Exhibits D and D-1) are also forfeited to the government."

The Facts

Version of the Prosecution

The Solicitor General, in the Appellee's Brief, recounts the events leading to appellant's arrest, as follows:^[10]

At around 4 p.m. of May 20, 1992, SPO4 Nicolas Bolonia was in his house when he received a tip from an informant that Roel Encinada would be arriving in Surigao City from Cebu City in the morning of May 21, 1992 on board the M/V Sweet Pearl bringing with him 'marijuana.' Bolonia was then Chief of the Vice Control Squad of the Surigao City Police (pp. 27-29; TSN, November 27, 1992, 34-40; p. 10, TSN, May 14, 1993).

Bolonia already knew Encinada because the latter previously was engaged in illegal gambling known as 'buloy-buloy.' After receiving the tip, Bolonia notified the members of his team - SPO3 Marcial Tiro, SPO3 Glen Abot and SPO3 Charlito Duero - as well as his colleague SPO4 Cipriano Iligan, Jr., the chief of the Intelligence and Investigation Division, of the information he received. Because the information came late, there was no more time to secure a search warrant (pp. 38; TSN, November 27, 1992, May 14, 1993, p. 13; pp. 4, 19; TSN, March 3,

1993).

In the early morning of May 21, 1992, Bolonia, Iligan and other police officers deployed themselves in different strategic points at the city wharf to intercept Encinada. At about 8:15 a.m. of the same day, the M/V Sweet Pearl finally docked. The police officers saw Encinada walk briskly down the gangplank, carrying two small colored plastic baby chairs in his hand (p. 11 TSN, May 14, 1993; pp. 4, 5, 15-16 TSN, March 3, 1993; pp. 29-30 TSN, November 27, 1992, pp. 29-30).

From their various positions, the police officers followed Encinada immediately boarded a tricycle at Borromeo Street, still holding the plastic chairs. As the tricycle slowly moved forward, Bolonia chased it and ordered the driver to stop after identifying himself as a police officer. When the vehicle stopped, Bolonia identified himself to Encinada and ordered him to alight from the tricycle. Bolonia asked Encinada to hand over the plastic chairs, to which the latter complied (pp. 5, 6, 17 TSN, March 3, 1993, pp. 30-32, 35 TSN, November 27, 1992).

Bolonia noticed that there were two small chairs, one green and the other blue, stacked together and tied with a piece of string. Between the stack of chairs, there was a bulky package. Bolonia examined it closely and smelled the peculiar scent of marijuana. Making a small tear in the cellophane cover, Bolonia could see and smell the what appeared to be 'marijuana,' a prohibited drug (pp. 6-9 TSN, March 3, 1993, Exh. 'B', 'D' and sub-markings; pp. 32-34. 35-39 TSN, November 27, 1992).

Encinada was brought to the central police station. Bolonia, in the presence of one Nonoy Lerio who is a member of the local media and a friend of Encinada, opened the package. It was discovered that indeed, the contents consisted of dried leaves known as marijuana. In the course of the investigation, Encinada surrendered to Bolonia his passenger ticket issued by M/V Sweet Pearl (pp. 9-11 TSN, March 3, 1993, Exh. 'E'; pp. 34-35, 39-40 TSN, November 27, 1992).

On July 13, 1992, Bolonia brought the package of dried leaves for examination at the PNP Crime Laboratory at Camp Evangelista, Cagayan de Oro City. The forensic chemist, Inspector Vicente Armada, tested the leaves and confirmed that they were positive for marijuana. However, the marijuana only weighed 610 grams, which Armada opined to be probably due to shrinkage and moisture loss (pp. 12-17, 19-21, 24-40, 41; TSN, November 27, 1992, Exh. 'A', 'B'. 'C' and sub-markings.)"

Version of the Defense

Appellant sets up denial as his defense. In his brief, he denied ownership and possession of said plastic baby chairs, as follows:^[11]

1) In the morning of May 21, 1992, at around 8:00 o'clock in the morning, more or less, the accused was seen to have disembarked from MV Sweet Pearl after an overnight trip from Cebu City;

2) The accused proceeded to the Surigao PPA Gate and boarded a motorela bound for his residence at Little Tondo, (within the City Proper), Surigao City. The Motorela was fully loaded with passengers, with the accused as the fourth passenger;

3) When the motorela was already able to travel a distance of about ten (10) meters more or less, the same was forcibly stopped by persons who ordered the passengers to disembarked (sic). Thereafter, all the (baggage) of the passengers and the driver were ordered to stand in a line for which a body search was made individually (sic);

4) After the search was made, the accused was singled out in the line and ordered to board the service vehicle of the police and was brought to the PNP Police Station.

Before however the accused boarded the jeep, he was openly protesting to the action taken by the police authorities and demanded from the apprehending officers a copy of a search warrant and/or warrant of arrest for the search made and for his apprehension;

5) In the police headquarters, the accused was made to undergo custodial investigation for which a plastic bag was presented to him allegedly containing the subject marijuana leaves. The accused denied that the said plastic bag belonged to him.

The denial was witnessed by Mr. Daniel 'Nonoy' Lerio, Jr. a member of the Surigao City Press, who was invited by the Police Investigators to witness the presentation of the alleged marijuana leaves, during the said investigation;

6) After the custodial investigation, the accused was placed immediately behind bars and the Information for Violation of RA 6425 as amended by Batas Pambansa Blg. 179 was filed before the Court;

x x x

x x x

x x x"

Aside from appellant, the defense also presented five (5) other witnesses whose testimony allegedly established the following:[12]

8.a) Ruben Concha – the driver of the motorela who testified that he was surprised when the motorela he was driving was forcibly stopped (while already in motion) by the police authorities while directing his four (4) passengers, (3 males and 1 female) to disembarked (sic) together with their (baggage).