

## SECOND DIVISION

[ CA-G.R. CR NO. 29700, August 18, 2006 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. EDGAR ALLAN A. DAVID, ACCUSED-APPELLANT.**

### DECISION

**ENRIQUEZ, JR., J.:**

This is an appeal from the Judgment dated August 11, 2005 rendered by the Regional Trial Court (RTC), Branch 63, Tarlac City, in Criminal Case No. 13544 for Violation of Republic Act 9165, the dispositive portion of the assailed decision reads:

"WHEREFORE, judgment is hereby rendered finding the accused guilty of Violation of Section 11, Article II of R.A. 9165, and is hereby sentenced to suffer the indeterminate penalty of imprisonment of Twelve (12) years and One (1) day to Twenty (20) years and to pay the fine of Php300,000.00. The shabu should be turned over to the Dangerous Drugs Board for proper disposal.

SO ORDERED."

The facts of the case as culled from the records are as follows:

On October 5, 2004, Edgar Allan A. David (hereafter accused-appellant) was charged with Violation of Section 11, Article II of Republic Act (RA) 9165, known as the Dangerous Drugs Act of 2002, in an Information which reads:

"That on October 3, 2004 at around 9:00 o'clock in the evening, at Tarlac City, Philippines, and within the jurisdiction of this Honorable Court, accused, did then and there, willfully, unlawfully and criminally have in his possession and control Methamphetamine Hydrochloride known as Shabu, a dangerous drug, weighing 0.092 gram, without being authorized by law.

CONTRARY TO LAW."

Upon arraignment, accused-appellant pleaded not guilty to the charged. At the pre-trial conference, the parties stipulated on the following:

1. That the accused-appellant was driving when he was flagged down by the police officers;
2. That there was no check point at the place where the tricycle driven by the accused was flagged down;
3. That accused-appellant was subjected to body search when he was frisked by the police officers and thereafter arrested;

4. Accused-appellant, however, denied that the specimen which was subject of the laboratory report was taken from him, although accused-appellant admitted that the specimen which was subjected to laboratory report was found positive for shabu (*Order dated January 3, 2005*).

During the trial on the merits, the prosecution presented P01 Neil Melocotones as witness and submitted its documentary evidence. The prosecution established the following facts:

"On October 3, 2004, at about 9:00 o'clock in the evening, a male informant went to the police precinct to personally report the illegal activities of a certain Edgar Allan David, accused-appellant in this case. He reported that said person acts as a drug courier using his motorized tricycle with body number 5303. Asked by P01 Melocotones whether he was sure of this information, the informant declared that he was willing to be put to jail if no "shabu" could be found with the accused-appellant. Immediately, three police officers, P01 Neil Melocotones, P03 Apolonio B. Vargas, Jr. and SP03 Rolando B. Quinto, responded to the report. They proceeded to the area near the barangay hall of Matatalaib, where they flagged down accused-appellant's tricycle, which body number corresponded to the one reported by their informant. As the two other police officers searched the tricycle, P01 Melocotones searched the accused-appellant, and found in his possession one sealed transparent plastic containing white crystalline believed to be "shabu". Accused-appellant then readily admitted that he bought said item from a certain Constantino Baltazar of Barangay San Nicolas, Tarlac City. Upon laboratory examination, the substance was found to be positive for methamphetamine hydrochloride or "shabu", a dangerous drug (Appellee's Brief, pp. 3-4, Rollo, pp. 58-59)."

Accused-appellant did not present any evidence. Instead, he filed a Motion to Dismiss by way of demurrer to evidence, which the trial court denied in the Order dated June 6, 2005.

After due proceedings, the trial court rendered its judgment in the terms earlier set forth. Hence, this appeal assigning the following errors:

#### I

THE REGIONAL TRIAL COURT, BRANCH 63, TARLAC CITY HAS COMMITTED A GRIEVOUS ERROR IN RULING THAT THE SEARCH AND THE ARREST OF THE ACCUSED-APPELLANT AND THE SEARCH OF HIS MOTORIZED TRICYCLE WERE VALID AND LEGAL BASED ON THE EXISTENCE OF PROBABLE CAUSE AND JUSTIFIED UNDER EXTREME URGENCY;

#### II

THE REGIONAL TRIAL COURT, BRANCH 63, TARLAC CITY, HAS COMMITTED A VERY SERIOUS ERROR IN NOT APPLYING THE CASE OF "PEOPLE VS MOLINA, 143 SCAD 685-698 [FEBRUARY 19, 2006] IN ITS

DECISION;

III

THE REGIONAL TRIAL COURT, BRANCH 63, TARLAC CITY, HAS COMMITTED GRIEVOUS ERROR IN RULING THAT THE CASE OF PEOPLE VS MOLINA WAS NOT APPLICABLE IN THE CASE SINCE "THE POLICE, IN THAT CASE, HAD AMPLE TIME TO APPLY FOR A SEARCH WARRANT;

IV

THE REGIONAL TRIAL COURT, BRANCH 63, TARLAC CITY HAS COMMITTED A GRIEVOUS ERROR IN APPLYING THE CASES OF VALMONTE VS DE VILLA, 186 SCRA 670 AND PEOPLE VS MALMSTEDT, 198 SCRA 401 TO JUSTIFY THE EXTENSIVE SEARCHED OF THE MOTORIZED TRICYCLE AND THE SEARCHED OF THE ACCUSED-APPELLANT, RESPECTIVELY, AND;

V

THE REGIONAL TRIAL COURT, BRANCH 63, TARLAC CITY, HAS COMMITTED A VERY SERIOUS ERROR IN CONVICTING THE ACCUSED-APPELLANT FOR VIOLATION OF SECTION 11, ARTICLE II OF REPUBLIC ACT 9265.

***The appeal is meritorious.***

*Section 2, Article III of the Constitution* mandates that searches and seizures must be carried out on the strength of a search warrant predicated upon the existence of a probable cause. Any article or object secured through unreasonable search and seizure is inadmissible in evidence "for any purpose in any proceeding" pursuant to *Section 3 (2), Article III of the Constitution*.

In the instant case, the police officers were admittedly unarmed with a warrant of arrest. To legitimize the warrantless search and seizure, the RTC ruled that it involved a search of a moving vehicle. Warrantless search of a moving vehicle is allowed only when it is not practicable to secure a warrant because the vehicle carrying the prohibited drugs can be quickly moved out of the area or jurisdiction in which the warrant must be sought. This exception in no way gives the police officers unlimited discretion to conduct warrantless searches of automobiles in the absence of probable cause. When a vehicle is stopped and subjected to an extensive search, such warrantless search has been held to be valid as long as the officers conducting the search have reasonable or probable cause to believe before the search that they will find the instrumentality or evidence pertaining to a crime, in the vehicle to be searched (*People vs Lapitaje, 397 SCRA 675*).

Probable cause signifies a reasonable ground of suspicion supported by circumstances sufficiently strong in themselves to warrant a cautious man's belief that the person to be arrested is probably guilty of committing the offense or the existence of such facts and circumstances which could lead a reasonably discreet and prudent man to believe that an offense has been committed and that the item or object sought in connection with the seizure is in the place to be searched