

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

Ponente: ENRIQUEZ, JR., J.

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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:

- That the accused-appellant was driving when he was flagged down by the police officers;
- That there was no check point at the place where the tricycle driven by the accused was flagged down;
- That accused-appellant was subjected to body search when he was frisked by the police officers and thereafter arrested;
- 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 (*People vs Gonzales*, 365 SCRA 17).

No semblance of any compliance with the rigid requirements of probable cause and warrantless arrests was shown in this case. Accused-appellant, at the moment he was searched and eventually arrested, was not committing a crime, nor was it shown that he was about to commit one or that he had just committed so. Accused-appellant was merely driving his tricycle when he was flagged down by the police officers. He was not acting in any manner that would engender a reasonable ground for them to suspect and conclude that he was committing a crime. The police officers would not have apprehended him were he not identified by an alleged informant pointing to him as the drug courier. After conducting the search on his person and on the tricycle and the prohibited drug was found, his arrest was effected. The testimony of P01 Neil Melocotones is evident on this matter, thus:

Cross-examination by Atty. Mergas:

Q: Why did you flag down the accused?

A: Because there was a report to us that this tricycle with body number like this got this drug known as shabu.

Q: A woman or man reported to you?

A: A man.

x x x x

Q: So he is a man and told you that? What body number of that tricycle?

A: No. 5303.

x x x x

Q: Only the plate number was given?

A: Only the body number was given and also the name of the subject person.

Q: What is the name of the person?

A: Edgar Allan David.

Q: What else or other information did you get from the informant?

A: Only that. That was the only information given to us.

Q: You did not know Edgar Allan David at that time?

A: I know him.

Q: Why do you know him?

A: Because we usually respond to their place and I know him.

Q: You mean to say you had arrested him before?

A: No, sir. In only know him. I know he is Allan David.

Q: So, only that information was given to you? No more?

A: Yes, that was the only information.

Q: And you did not ask the informant any other questions to determine the truth of the information?

A: I asked the informant if he is sure that is the number of the tricycle and the subject person really got shabu?

x x x x

Q: You asked him if he was certain of the information?

A: Yes, sir.

Q: And he said yes?

A: Yes, sir.

Q: So you did not ask him where he got the information? You did not ask him what place did he get the shabu? You did not ask him how he got the shabu? Okay, after you received that information, you went outside together with the other police?

A: Yes, sir, went to the place and waited for the tricycle to pass by.

Q: And in your affidavit, you stated after seeing the tricycle, you arrested the accused Edgar Allan David?

A: We searched him.

Q: The search came first before the arrest?

A: Yes, sir.

Q: So when you found, as you alleged, the shabu, you arrested the accused?

A: Yes, sir.

x x x x

Q: At that time, accused was only driving his tricycle? In fact, when you flagged him down, he obediently stopped his tricycle, is that correct?

A: Yes, sir.

Q: He was not doing anything, except driving his tricycle?

A: Yes, sir.

Q: In other words, he was not doing or committing any crime when you arrested him?

A: We found shabu that is why we arrested him.

Q: You mean to say, you searched first and then after you found shabu, you arrested him?

A: Yes, sir" (tsn dated March 17, 2005, pp. 9-15).

This Court could neither sanction nor tolerate this action by the police officers as it is a clear violation of the constitutional guarantee against unreasonable search and seizure. The law requires that the search be incidental to a lawful arrest, in order that the search itself may likewise be considered legal (*People vs Suzuki*, 414 SCRA 43). Recent jurisprudence holds that the arrest must precede the search. Nonetheless, a search substantially contemporaneous with an arrest can precede the arrest if the police officers have probable cause to make the arrest at the outset of the search. Where a search is first undertaken, and an arrest effected based on evidence produced by the search, both such search and arrest would be unlawful, for being contrary to law (*People vs Canton*, 394 SCRA 478).

It is settled that “reliable information” alone, absent any overt act indicative of a felonious enterprise in the presence and within the view of the arresting officers, are not sufficient to constitute probable cause that would justify an in flagrante delicto arrest. The person arrested must execute an overt act indicating that he has just committed, is actually committing, or is attempting to commit a crime and such overt act is done in the presence or within the view of the arresting officer (People vs Tudtud, 412 SCRA 142).

There was no legal basis for the police officers to effect a warrantless search of accused-appellant as there was no probable cause and the accused-appellant not having been lawfully arrested. The arrest being incipiently illegal, then the subsequent search was similarly illegal. Any evidence obtained in violation of the constitutional provision is legally inadmissible in evidence under the exclusionary rule (People vs Peralta, 426 SCRA 472). In this case, the “shabu” was obtained as a result of the search made without a warrant subsequent to an unlawful arrest; hence, it cannot be used as evidence against accused-appellant. They are "fruits of a poisoned tree" which must be rejected pursuant to Article III, Sec. 3(2) of the Constitution. And as there is no evidence other than the hearsay testimony of the arresting police officer and the “reliable information” of the alleged informant, the conviction of accused-appellant has no leg to stand on.

WHEREFORE, premises considered, the appeal is hereby GRANTED. The assailed Judgment dated August 11, 2005 is hereby REVERSED AND SET ASIDE. Accused-appellant is ACQUITTED of the crime charged for insufficiency of evidence.

SO ORDERED.

Jacinto, (Chairman) and De Leon, JJ., concur.

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