

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JIMMY VELASQUEZ Y BIYALA, ACCUSED-APPELLANT.

Ponente: ROXAS, V.Q.J.

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Legal Principles in this Case:

If carried out with due regard to constitutional and legal safeguards, implementation of a search warrant has been considered as an efficient, effective, and even restrained mode of apprehending drug pushers and thus, implementation of a search warrant shows the careful regard of police officers to take the pains to first prove to a Judge the existence of drug-trafficking activity being undertaken from inside a residence that is intended to be searched by the use of a search warrant and only when the police officers have been successful in convincing the Judge of the probable commission of a crime, would these police officers, in the company of barangay officials implement the search warrant. If a buy-bust operation is acceptable as a modern means of catching drug offenders, the implementation of a search warrant has been the traditional means tested through time as the most desired means to catch drug offenders. In a search warrant, the Judge had already determined “probable cause” unlike in a buy-bust operation where it is the police officer who uses his discretion against persons whom he thinks the buy-bust operation would be directed against. The delivery of the contraband to the poseur-buyer and the receipt by the seller of the marked money successfully consummates the buy-bust transaction between the entrapping officers and the accused while it is the court-ordered search in the presence of the owners of the house in the company of the barangay officials that guarantees that whatever contraband would be seized as pre-determined to be found, would be in the plain sight of all those witnesses involved in the search warrant implementation, thus eradicating any possibility of frame-ups.

The Case

Accused was convicted of illegal possession of one brick of marijuana and 4.12 grams of shabu in a sachet. Instead of a buy-bust operation, this arrest was in the course of a validly issued search warrant. When the search warrant was implemented, the one brick of marijuana was found in the room by police officers who were accompanied by two barangay officials. The one sachet of shabu was taken from the pocket of the accused which was a result of a body search during the implementation of the search warrant. The defenses of the accused were that the one brick of marijuana and the one sachet of shabu had been planted by the police.

The Facts

This is an appeal from the September 17, 2002 Decision[1] of the Regional Trial Court (RTC) of Baguio City, Branch 61, in Criminal Case Nos. 17945-R and 17946-R, which convicted accused-appellant Jimmy Velasquez y Biyala (VELASQUEZ) of Illegal Possession of Marijuana and Illegal Possession of Methamphetamine Hydrochloride (shabu). In the first case, accused-appellant VELASQUEZ was sentenced to reclusion perpetua and ordered to pay a fine of P500,000.00, while in the second case he was sentenced to 6 months of arresto mayor to 2 years and 4 months of prision correccional and ordered to pay the costs.

On July 31, 2000, Prosecutor I Raymond T. Tabangin filed two (2) Informations with the RTC of Baguio City, docketed as Criminal Case Nos. 17945-R and 17946-R, charging accused-appellant VELASQUEZ with violation of Section 8, Article II and Section 16, Article III of Republic No. 6425 or the Dangerous Drugs Act of 1972, as amended. The said Informations read as follows:

Criminal Case No. 17945-R

“That on or about the 11[th] day of June, 2000, in the City of Baguio, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously have in his possession, custody and control one (1) brick of dried marijuana leaves having a weight of 826.4 grams wrapped with newspaper pages, knowing fully well that said leaves are marijuana leaves, a prohibited drug, in violation of the above-mentioned provision of law.

CONTRARY TO LAW.”[2]

Criminal Case No. 17946-R

“That on or about the 11[th] day of July, 2000 in the City of Baguio, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously have in his possession and control 4.12 grams of methamphetamine hydrochloride (shabu) contained in heat sealed plastic bags, as regulated drugs, without the corresponding license or prescription, in violation of the aforecited provision of law.

CONTRARY TO LAW.”[3]

When arraigned on September 26, 2000, accused-appellant VELASQUEZ, with the assistance of his counsel de parte, Atty. Jose Mencio Molintas, pleaded not guilty to the charges.[4] Pre-trial conference was set for October 11, 2000[5] and was terminated on October 23, 2000, with the trial court issuing a pre-trial order.[6]

Thereafter, trial on the merits ensued.

Version of the Prosecution

On July 9, 2000, at about 9:00 in the morning, a certain Manuel De Vera reported to the office of the 14th Regional Criminal Investigation and Detection Group that accused-appellant VELASQUEZ is engaged in selling shabu and marijuana dried leaves in his residence at No. 144 Paraan St., Victoria Village, Quezon Hill, Baguio City. De Vera allegedly came to know of the said activities of accused-appellant VELASQUEZ when his co-driver, a certain Arnold, whom he claimed as a shabu user, told him about it.

On the same day, SPO1 Modesto Carrera instructed De Vera to buy shabu and gave him P600.00 to verify the truthfulness of the allegations against accused-appellant VELASQUEZ. De Vera and Arnold were able to buy shabu and marijuana which they gave later to SPO1 Carrera.

Thereafter, SPO1 Carrera filed with the RTC of Baguio City, Branch 59, an application for the issuance of a search warrant against accused-appellant VELASQUEZ, which was eventually granted.[7]

On July 13, 2000, a team composed of P/Sr. Insp. Castil, PO1 Sawad, PO2 Cejas, PO1 Labiasto, SPO1 Carrera, SPO1 Lacangan and PO1 Amangao was formed to implement the search warrant. They sought the assistance of Barangay Kagawad Jaime Udani and Barangay Kagawad Lilian Somera of Barangay Victoria Village to witness the search. The police officers together with Udani and Somera proceeded to the residence of accused-appellant

VELASQUEZ, introduced themselves and presented the search warrant.

In the course of the search, PO1 Amangao and SPO1 Lacangan found in the bedroom of accused-appellant VELASQUEZ a plastic bag containing a brick of dried leaves suspected to be marijuana, which was wrapped in an old newspaper. After informing accused-appellant VELASQUEZ that they found illegal drugs inside his bedroom, SPO1 Lacangan arrested him and apprised him of his constitutional rights. When accused-appellant VELASQUEZ was frisked, one transparent heat-sealed plastic sachet containing a white crystalline substance suspected to be shabu was found in his pocket. The search on accused-appellant VELASQUEZ's residence also yielded 36 pieces of rolling papers, aluminum foil and tooter, among others.

Version of the Defense

In the morning of June 11, 2000, accused-appellant VELASQUEZ was in his house at 143 Quezon Hill when his fellow drivers, Rolando and Nelson, went to see him to redeem a cell phone the latter had pawned to accused-appellant VELASQUEZ. Then, someone repeatedly knocked at his door and when accused-appellant VELASQUEZ asked who it was, no one answered. Suddenly, said persons who refused to identify themselves barged into the house of accused-appellant VELASQUEZ by kicking the door open and once inside, they drew their firearms and pointed the same to the accused. The intruders turned out to be Police Officers Carrera, Lacangan and Amagao, who were there to serve a search warrant on accused-appellant VELASQUEZ.

Accused-appellant VELASQUEZ was bodily searched but nothing was found on him. Nevertheless, the police operatives continued their operations inside the bedroom of accused-appellant VELASQUEZ. When SPO1 Lacangan was inside the bedroom, he summoned accused-appellant VELASQUEZ and presented to him something wrapped in a bag. They proceeded to the living room and accused-appellant VELASQUEZ was shown what was found inside his room, a kilo of marijuana. SPO1 Lacangan was allegedly holding the marijuana when he entered the room of accused-appellant VELASQUEZ.

Accused-appellant VELASQUEZ claimed that when the conduct of the search started, barangay officials Udani and Somera were not yet present. They appeared only later, about 5 minutes after the search had started.

Assailed Decision of the RTC

On September 17, 2002, the RTC of Baguio City, Branch 61, rendered the assailed Decision,[8] in Criminal Case Nos. 17945-R and 17946-R, convicting accused-appellant VELASQUEZ of Illegal Possession of Marijuana and Illegal Possession of Methamphetamine Hydrochloride, the dispositive portion of which provides as follows:

“WHEREFORE, judgment is rendered finding the accused Jimmy Velasquez y Biyala GUILTY beyond reasonable doubt in both cases. In Criminal Case No. 17945-R, the accused is sentenced to Reclusion Perpetua and to pay a fine of P500,000; in Criminal Case No. 17946-R, the accused is sentenced to a prison terms of six (6) months of arresto mayor to two (2) years, four (4) months of prision correccional, and to pay the costs.

SO ORDERED.”

Accused-appellant VELASQUEZ filed a motion for reconsideration[9] on October 7, 2002, which was denied by the trial court in its Order[10] dated November 21, 2002.

Accused-appellant VELASQUEZ filed a notice of appeal[11] on December 10, 2002. In its Order[12] dated December 11, 2002, the trial court gave due course to the appeal.

Assignment of Errors

In his Brief,[13] accused-appellant VELASQUEZ assigned the following errors:

- I. THE COURT A QUO ERRED IN UPHOLDING THE LEGALITY OF THE SEARCH DESPITE IRREGULARITIES;
- II. THE COURT A QUO ERRED IN NOT RECOGNIZING THE DISCREPANCY IN THE TESTIMONY OF THE WITNESSES ON MATERIAL MATTER; and
- III. THE COURT A QUO ERRED IN FINDING THE ACCUSED GUILTY BEYOND REASONABLE DOUBT DESPITE THE FACT THAT SOME ITEMS WERE IN FACT TAKEN FROM ANOTHER PERSON.

The Ruling of this Court

Appeal is bereft of merit.

If carried out with due regard to constitutional and legal safeguards, implementation of a search warrant has been considered as an efficient, effective, and even restrained mode of apprehending drug pushers and thus, implementation of a search warrant shows the careful regard of police officers to take the pains to first prove to a Judge the existence of drug-trafficking activity being undertaken from inside a residence that is intended to be searched by the use of a search warrant and only when the police officers have been successful in convincing the Judge of the probable commission of a crime, would these police officers, in the company of barangay officials implement the search warrant. If a buy-bust operation is acceptable as a modern means of catching drug offenders, the implementation of a search warrant has been the traditional means tested through time as the most desired means to catch drug offenders. In a search warrant, the Judge had already determined “probable cause” unlike in a buy-bust operation where it is the police officer who uses his discretion against persons whom he thinks the buy-bust operation would be directed against. The delivery of the contraband to the poseur-buyer and the receipt by the seller of the marked money successfully consummates the buy-bust transaction between the entrapping officers and the accused[14] while it is the court-ordered search in the presence of the owners of the house in the company of the barangay officials that guarantees that whatever contraband would be seized as pre-determined to be found, would be in the plain sight of all those witnesses involved in the search warrant implementation, thus eradicating any possibility of frame-ups.

Accused’s denial and claim of a frame-up cannot prevail over the positive testimonies of the prosecution witnesses. Like alibi, frame-up is a defense that can easily be concocted, which is commonly used as a standard line of defense in most prosecutions arising from violations of the Dangerous Drugs Act and there will be disastrous consequences on the enforcement of law and order, not to mention the well-being of society, if the courts, solely on the basis of the policemen’s alleged rotten reputation, will accept in every instance this form of defense which can be so easily fabricated. A valid search warrant obviates any avenue for frame-ups. It is precisely for this reason that the legal presumption that official duty has been regularly performed exists, so that, credence is given to prosecution witnesses who are police officers, in the absence of proof of any odious intent on the part of the police authorities to falsely impute a serious crime, for they are presumed to have performed their duties in a regular manner.[15]It is settled that in passing upon the credibility of witnesses, appellate courts will generally not interfere with the judgment of trial courts. That is, unless there appears on the records some facts or circumstances of weight and influence, which the trial court has overlooked or the significance of which it has misapprehended or misinterpreted. This attitude of appellate courts arises from the fact that the lower courts are in a better position to decide the question, having heard the witnesses themselves and observed their deportment and manner of testifying during the trial[16].Moreover, it is a settled rule that in cases involving violations of the

Dangerous Drugs Act, credence is given to prosecution witnesses who are police officers for they are presumed to have performed their duties in a regular manner, unless there is evidence to the contrary[17]. And in the absence of proof of any odious intent on the part of the police authorities to falsely impute a serious crime, We will not allow their testimony to be overcome by the self-serving and uncorroborated claim of frame-up[18].

At this point, it is also worth noting that there are several inconsistencies imputed in the testimonies of the witnesses of the prosecution which allegedly impair their credibility.

First, there are inconsistencies in the respective testimonies of prosecution witnesses PO1 Rolando Amangao and SPO1 Warren Lacangan as to the persons who entered the bedroom of accused-appellant VELASQUEZ during the conduct of the search. PO1 Amangao testified as follows:

“Q Who entered the bedroom of Jimmy Velasquez first among you Police Officers who were there such as PO Sejas, PO Lacangan and yourself?

A I, sir.

Q How about barangay kaagawad (sic) Lilian Somera and Brgy. Kagawad Jaime Udani?

A They followed me, sir.

Q They both followed you?

A Yes, sir.

Q After both this barangay kagawad enter the bedroom of Jimmy Velasquez, who else entered?

A The wife, sir.

x x x x x x x x

Q After the wife enter who else enter?

A PO1 Lacangan, sir.

Q After PO1 Lacangan enter the bedroom of Jimmy Velasquez, was there anyone else who enter?

A None, sir.”[19]

The said testimony of PO1 Amangao was later allegedly contradicted by the testimony of SPO1 Lacangan, which we have already quoted above, that when they searched the bedroom, accused-appellant VELASQUEZ, his wife and his two companions were at the sala.[20]

The important matter is that the different location of the different witnesses during the search would show that indeed official duty had been performed because there were indeed many witnesses when the search warrant was implemented which would safeguard legally, rather than intrude illegally, the privacy rights of the owners of the house being searched, after “probable cause” had been first determined by a Judge before the search warrant was issued.

Second, the respective testimonies of prosecution witnesses SPO1 Warren Lacangan and Barangay Kagawad Jaime Udani allegedly contradicted each other as to how the door of the house of accused-appellant VELASQUEZ was opened during the search. SPO1 Lacangan testified that he knocked at the door and accused-appellant VELASQUEZ opened it, viz.:

“Q What was the first thing that you in particular did when you enter the house of Jimmy Velasquez in the

morning of July 13, 2000?

A I knock at his door and when Jimmy Velasquez introduced ourselves as policemen and we give him copy of the said Search Warrant, sir.”[21]

On the contrary, Barangay Kagawad Udani testified that the door was forcibly opened, thus:

“Q Was the door of the house open when Mody Carrera knocked at the door?

A No, sir the door was forced open because there like to open the door, sir.”[22]

What is important however, which We find, is that “probable cause” was first determined by a Judge before the search warrant was issued. It is inconsequential whether the door was forced open or was freely opened when the search warrant was implemented because any implementation of a search warrant would necessarily authorize the breaking of doors, if need be, since the search warrant was legally issued and no resistance is expected to thwart the implementation of the legally-issued court-sanctioned search warrant.

Finally, the respective testimonies of prosecution witnesses SPO1 Warren Lacangan and SPO1 Modesto Carrera were alleged to be in conflict as to whether the latter was present in the bedroom during the search conducted therein. SPO1 Lacangan stated in the following testimony that SPO1 Carrera was present:

“Q And who actually search that bedroom?

A Officer Sejas, myself, PO2 Amangao and aksi SPO1 Carrera, sir.

Q Aside from the four (4) of you who else enter the room of Jimmy Velasquez?

A The two (2) barangay official, sir.”[23]

On the other hand, SPO1 Carrera testified that during the conduct of the search on the bedroom, he was outside the house securing its perimeter area, to wit:

“Q And how about you, what did you do?

A I am in the perimeter area because at that time, sir I am designated to secure the perimeter.

Q As designated to secure the perimeter, what did you do when the search started?

A We secure the area, sir.

Q So you step out from the house of Jimmy Velasquez?

A Yes, sir.”[24]

The said inconsistency as to the whereabouts of some police officers in relation to many other police officers implementing the search warrant would be a minor matter

because what is important to determine is whether the search warrant successfully yielded what the police officers set out to find, as enumerated in the search warrant, such as guns, illegal drugs, or contraband, duly enumerated in the search warrant itself. The Judge who found probable for its issuance, listed those items to be searched for. The basic purpose of a search warrant is to pre-determine what contraband would be found in the house. In this case, the police officers proved to the satisfaction of the Judge that there would be marijuana or shabu or illegal drugs in the house. During the search warrant implementation, there were found, indeed, as particularly searched for, as per listed in the search warrant, marijuana and shabu found in the house searched. The search was a legal search. All other matters are minor details or collateral matters, that do not affect the results of the search warrant implementation. Among the tests of integrity of evidence are whether the testimonies agree on the essential facts

and whether the respective versions corroborate and substantially coincide with each other to make a consistent and coherent whole in reference to the main objective.[25]

The main objective in this case is stated in black and white – written in the very search warrant itself – that illegal drugs would be found in the house searched when the search warrant would be implemented.

The following elements of the crime were established by the prosecution beyond reasonable doubt: (a) that the accused was found in possession of a regulated drug; (b) that the accused was not authorized by law or by duly constituted authorities; and, (c) the accused had knowledge that the said drug is a regulated drug. This crime is *mala prohibita*, and, as such, criminal intent is not an essential element. However, the prosecution must prove that the accused had the intent to possess (*animus possidende*) the drugs. Possession, under the law, includes not only actual possession, but also constructive possession. Actual possession exists when the drug is in the immediate physical possession or control of the accused. On the other hand, constructive possession exists when the drug is under the dominion and control of the accused or when he has the right to exercise dominion and control over the place where it is found. Exclusive possession or control is not necessary so that even if his right to exercise control and dominion over the place where the contraband is located is shared with another, accused may still be considered as having effective control. The prosecution presented: (1) Chemistry Report No. D-081-2000[26] which proved that prohibited drug was taken from the house of accused; (2) Chemistry Report No. BCDT -266-2000-Exh N/Exh 1[27] which proved that prohibited drug was taken from the person of the accused. The witnesses for the prosecution testified that the accused had used the house as his base for operation in the sale of prohibited drugs and therefore accused knew that he was dealing with and in possession of prohibited drugs.

All told, evidence against accused-appellant VELASQUEZ were procured legally with the use of a valid search warrant and therefore admissible, and the prosecution has established his guilt with moral certainty.[28]

The Fallo

WHEREFORE, premises considered, the September 17, 2002 Decision of the Regional Trial Court of Baguio City, Branch 61, in Criminal Case Nos. 17945-R and 17946-R, is hereby **AFFIRMED**.

Pursuant to Section 13 (c), Rule 124 of the 2000 Rules of Criminal Procedure as amended by A.M. No. 00-5-03-SC dated September 28, 2004, which became effective on October 15, 2004, this judgment of the Court of Appeals may be appealed to the Supreme Court by notice of appeal, filed with the Clerk of Court of the Court of Appeals.

SO ORDERED.

VICENTE Q. ROXAS
Associate Justice

WE CONCUR:

JOSEFINA GUEVARA-SALONGA
Associate Justice

APOLINARIO D. BRUSELAS, JR.
Associate Justice

[1] Rollo, p. 87.

- [2] Original Records, Vol. 1, p. 1.
- [3] Original Records, Vol. 2, p. 1.
- [4] Original Records, Vol. 2, p. 13.
- [5] Original Records, Vol. 2, p. 13.
- [6] Original Records, Vol. 2, p. 33.
- [7] Exhibit "A," Original Records, Vol. 2, p. 22.
- [8] Original Records, p. 169.
- [9] Original Records, p. 177.
- [10] Original Records, p. 186.
- [11] Original Records, p. 188.
- [12] Original Records, p. 190.
- [13] Rollo, p. 79.
- [14] People vs. Ambrosio, G.R. No. 135378, April 14, 2004, 427 SCRA 312
- [15] People vs. Bongalon, G.R. No. 125025, January 23, 2002, 374 CRA 289
- [16] People vs. Razul, G.R. No. 146470, November 22, 2002, 392 SCRA 553
- [17] People vs. Bongalon, G.R. No. 125025, January 23, 2002, 374 SCRA 289
- [18] People vs. Ambrosio, G.R. No. 135378, April 14, 2004, 427 SCRA 312
- [19] TSN, February 28, 2001, p. 9.
- [20] TSN, April 17, 2001, p. 8.
- [21] TSN, April 17, 2001, p. 5.
- [22] TSN, March 14, 2001, p. 7.
- [23] TSN, April 17, 2001, p. 7.
- [24] TSN, January 8, 2001, p. 6.
- [25] People vs. Landicho, G.R. No. 116600, July 3, 1996, 258 SCRA 1 citing People vs. Jumamoy, G. R, No. 101584, April 7, 1993, 221 SCRA 333; and People vs. Sibug, G.R. No. 108520, January 24, 1994, 229 SCRA 489.
- [26] Page 16 Record on Appeal is the Request for Laboratory Exam and Pages 17 to 18 is the Chemistry Report No. D-081-2000.
- [27] Page 38 Record on Appeal is the Initial Lab Exam Report – July 13, 2000 – Exh-K-1 and Page 46 is Chemistry Report No. BCDT-266-2000 – Exh N / Exh 1.
- [28] People vs. Estella, G.R. Nos. 138539-40, January 21, 2003, 395 SCRA 553 citing Section 2, Rule 133 of the Revised Rules of Court.

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