

**JOSEPH G. AVENA, PETITIONER, VS. THE PRESIDING JUDGE,
REGIONAL TRIAL COURT, BRANCH 1, TUGUEGARAO CITY,
CAGAYAN AND THE CITY PROSECUTOR OF TUGUEGARAO CITY,
PROVINCE OF CAGAYAN AN...**

Ponente: LOPEZ, J.

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LOPEZ, J.:

On April 12, 2013, about 13:00 in the afternoon, PSI Edgar V. Manuel received an information from a confidential informant that a Victory Liner Bus with body number 8111 will arrive on that day at Barangay Leonarda, Tuguegarao City, carrying a package containing methamphetamine hydrochloride, commonly known as shabu. The package is addressed to one Joseph Avena (Avena) from Barangay Balzain, Tuguegarao City who will pick up the package upon the arrival of the bus. Pursuant to the information, an entrapment operation team was organized wherein PO2 Edgar V. Tacad and PO1 Hurllee T. Bangalan were designated as arresting officers and the rest of the team as immediate back-up. During the briefing, it was agreed that the arresting team will board the bus when it passes Cabagan, Isabela en route to its final destination at Barangay Leonarda, Tuguegarao City. At 1800H, the bus arrived at Cabagan, Isabela. The arresting team boarded the bus and immediately noticed, on top of the dashboard, a small package wrapped in white plastic bag marked “Joseph Avena Tuguegarao Cagayan”. At 1830H, the bus arrived at the Victory Liner Bus Terminal in Barangay Leonarda, Tuguegarao City. At 1900H, the team noticed a male person wearing a gray T-shirt and short pants, later identified as Avena, claiming the package from the baggage counter. At this juncture, the team members approached him, introduced themselves as policemen and informed him that the package is suspected of containing shabu. The team thus inspected the package which revealed a Converse bull cap and two (2) pieces of heat sealed transparent plastic sachet containing white crystalline substance with markings 2B and 1/2B. The team apprised Avena of his Constitutional rights and proceeded to search his body where several pieces of plastic sachet used in repacking shabu and one (1) unit Nokia cellular phone were found. All the items seized from Avena were received, photographed and inventoried, and witnessed by DOJ representative Ferdinand Gangan of the City Prosecution Office, Media representative Frances Joanna Siriban of Bombo Radio, Tuguegarao City, Barangay Chairman Rizalino T. Luyun and Barangay Kagawad Diomedes Badajos, both of Barangay Leonarda, Tuguegarao City. The confiscated items were then brought to Camp Tirso H. Gador in Tuguegarao City for proper disposition while Avena was arrested and detained.[1]

On April 13, 2013, an Information[2] for violation of Republic Act No. 9165[3] was filed against Avena,[4] to wit:

That on or about 7:00 o' clock in the evening of April 12, 2013, in the City of Tuguegarao, Province of Cagayan, and within the jurisdiction of this Honorable Court, the accused JOSEPH AVENA y Garma, without any authority of law and without the necessary documents or permit from lawful authorities, did then and there, willfully, unlawfully, and feloniously possess three (3) -pieces of heat-sealed transparent plastic sachets containing a total weight of 4.86 grams of METHAMPHETAMINE HYDROCHLORIDE, commonly known as “Shabu, a dangerous drug; that the said dangerous drug was seized and confiscated from the possession,

control and custody of the accused at the Victory Liner Bus Terminal, Brgy Leonarda, this city when the latter went to claim his package containing the said dangerous drugs.

That the incident led to his immediate apprehension and arrest by members of the PNP, assigned at the Provincial Intelligence Section, Cagayan Police Provincial Office, Camp Tirso H. Gador, this city, in coordination with the members of the Philippine Drug Enforcement Agency (PDEA), Regional Office NO. 02, Camp Marcelo Adduru, Tuguegarao City.

The case was raffled to respondent Judge Raymond Reynold R. Lauigan (the respondent Judge). Before entering his plea, Avena moved to quash[5] the Information on the ground that his warrantless arrest was illegal. In a Resolution dated June 5, 2013,[6] the respondent Judge denied the Motion, thus:

The Court does not find merit to the Motion to Quash Information. As correctly pointed out by the prosecution, the accused was caught in flagrante delicto having in his possession the package which contains prohibited drugs. The Joint Affidavit of Arrest xxx stated that the accused claimed the package and that it was only after the package was claimed that the inspection was conducted. In other words, the accused already had custody and control over the package, thus, he was in possession of the prohibited drugs found inside said package.

The case of *People vs. Maspil* cited by the prosecution in its Opposition is applicable in this case. In said case, the Supreme Court declared that the search was valid even without a search warrant because the accused was then committing a crime. In the instant suit, the accused was in possession of prohibited drugs and was also committing a crime. Applying then the principle laid down in *People vs. Maspil*, the search conducted on the herein accused is valid since he was then in possession of prohibited drugs. Additionally, there was no time to secure a search warrant considering that the information from the Confidential Informant that a package of methamphetamine hydrochloride was sent to Joseph Avena through a Victory Liner Bus with Body No. 8111 came only at 1:00 p.m. and the said bus left Metro Manila at around 5:30 A.M. of said date. The bus was already then in transit at the time the information was obtained since the bus left Metro Manila early morning of the said day. As such, the Police Operatives had little or no time at all to prepare, process and secure a search warrant.

xxx

SO RESOLVED.

Avena moved for reconsideration, but the motion was denied.[7] Avena is now before this Court via a Petition for Certiorari[8] ascribing grave abuse of discretion on the respondent Judge when he denied his Motion to Quash despite the illegality of the search and his subsequent arrest.[9] He contends that he was not arrested in flagrante delicto because he has not committed, was actually committing, or was attempting to commit an offense in the presence of the arresting officers. He was only claiming his package when the police officers approached him and inspected the package.

We find the petition meritorious.

Section 5, Rule 113 of the Rules on Criminal Procedure enumerates the circumstances when a person may be arrested without a warrant, thus:

Section 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;

(b) When an offense has just been committed and he has probable cause to believe based on personal knowledge of facts or circumstances that the person to be arrested has committed it; and

(c) When the person to be arrested is a prisoner who has escaped from a penal establishment or place where he is serving final judgment or temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another.

Section 5(a) refers to an arrest in flagrante delicto and is the basis of the respondent Judge in upholding the validity of the search of the subject package as an incident to Avena's lawful warrantless arrest.

In cases of in flagrante delicto arrest, the accused is apprehended at the very moment he is committing or attempting to commit or has just committed an offense in the presence of the arresting officer. When a lawful arrest is effected, the person arrested may be searched of his person and belongings. However, for this warrantless arrests and search to apply, two (2) elements must concur: (1) the person to be arrested must execute an overt act indicating that he has just committed, is actually committing, or is attempting to commit a crime; and (2) such overt act is done in the presence or within the view of the arresting officer.[10]

Here, the requisites are not present. By their own statements in the Affidavit of Joint Arrest,[11] the arresting officers approached Avena and inspected the package after he claimed it from the baggage counter. He was not acting in a suspicious manner that may have called the attention of the police officers. There was no overt act indicating that he has just committed, is actually committing, or is attempting to commit a crime in front of the arresting officers. To be sure, the act of retrieving a package from the baggage counter is not a crime. Despite this, the arresting team hurriedly accosted Avena and introduced themselves as police officers. He was arrested before the alleged shabu was found inside the package. Thus, there could have been no in flagrante delicto arrest preceding the search lacking an overt physical act on the part of Avena that he had committed a crime, was committing a crime or was going to commit a crime.[12]

Thus, in *People v. Aminnudin*,[13] the Supreme Court held that:

xxx the accused-appellant was not, at the moment of his arrest, committing a crime nor was it shown that he was about to do so or that he had just done so. What he was doing was descending the gangplank of the M/V Wilcon and there was no outward indication that called for his arrest. To all appearances, he was like any of the other passengers innocently disembarking from the vessel. It was only when the informer pointed to him as the carrier of the marijuana that he suddenly became suspect and so subject to apprehension.

A similar pronouncement was made by the Supreme Court in *People v. Mengote*[14] where it did not consider eyes darting from side to side while holding one's abdomen in a crowded street at 11:30 in the morning, as overt acts and circumstances sufficient to arouse suspicion and indicative of probable cause. Thus:

[b]y no stretch of the imagination could it have been inferred from these acts that an offense had just been committed, or was actually being committed, or was at least being attempted in [the arresting officers'] presence.

Indeed, in searches incident to a lawful arrest, the arrest must precede the search; generally, the process cannot be reversed. However, 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.[15] The police officers arrested Avena based on a "reliable information" from a "Confidential Informant" that a package containing methamphetamine hydrochloride addressed to one Joseph Avena will be arriving at the Victory Liner Bus Terminal in Barangay Leonarda, Tuguegarao City. However, We find that this information is not sufficient to justify a warrantless arrest. The long standing rule in this jurisdiction is that "reliable information" alone is not sufficient to justify a warrantless arrest. 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. We find no cogent reason to depart from this well-established doctrine.[16]

While the right to be secure from unreasonable search and seizure may be waived, either expressly or impliedly, the records, however, do not show that Avena waived his right. His implied acquiescence, if any, is mere passive conformity given under coercive or intimidating circumstances and is, thus, considered no consent at all within the purview of the constitutional guarantee.[17]

In sum, Avena's prosecution for possession of dangerous drugs cannot stand on the basis of an illegally seized evidence. The three (3) heat sealed transparent plastic sachets containing 4.86 grams methamphetamine hydrochloride which were seized during an unreasonable search and seizure are illegal.

FOR THESE REASONS, the Petition for Certiorari is GRANTED.

SO ORDERED.

Reyes, Jr., J.C., (Chairperson) and Inting, JJ., concur.

[1] Rollo, pp. 53-54. Joint Affidavit of Arrest.

[2] Id., p. 56.

[3] Comprehensive Dangerous Drugs Act of 2002.

[4] Rollo, p. 55. Inquest-Resolution.

[5] Id., pp. 57-63.

[6] Id., pp. 31-32.

[7] Id., pp. 51-52. Order dated August 2, 2013.

[8] Rule 65 of the Rules of Court.

[9] Rollo, pp. 14-15.

[10] People of the Philippines v. Bernard Sy Chua, G.R. Nos. 136066-67, February 4, 2003.

[11] Rollo, pp. 53-54.

[12] At note 10.

[13] G.R. No. 74869, July 6, 1988.

[14] G.R. No. 87059, June 22, 1992.

[15] People of the Philippines v. Jack Racho y Raquero, G.R. No. 186529, August 3, 2010.

[16] Ibid.

[17] People of the Philippines v. Compacion y Surposa, G.R. No. 124442, July 20, 2001.

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