

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ANNABELLE FRANCISCO Y DAVID, @ ANNABELLE TABLAN,
ACCUSED-APPELLANT.**

G.R. No. 129035. August 22, 2002

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

Federico Verona and his live-in girlfriend, accused-appellant Annabelle Francisco, were placed under surveillance after the police confirmed, through a test-buy operation, that they were engaged in selling shabu or methamphetamine hydrochloride. SPO2 Teneros and SPO4 Alberto San Juan of OADDI-WPDC, U.N. Avenue, Manila applied for a search warrant before Branch 23 of the Regional Trial Court of Manila to authorize them to search the premises at 122 M. Hizon St., Caloocan City.

Attached to the application was the After-Surveillance Report[1] of SPO2 Teneros. It stated that Dante Baradilla, of 1726 Lallana St., corner Sta. Catalina St., Tondo, Manila, who claimed to be one of Federico Verona's runners in the illegal drugs operations, allegedly sought the assistance of SPO2 Teneros for the arrest of Verona.[2] The search warrant[3] was subsequently issued by Judge Bayhon authorizing the search of shabu and paraphernalia at No. 122 M. Hizon Street, Caloocan City.

Accused-appellant Annabelle Francisco, who was then nine months pregnant, was resting inside the second floor master's bedroom of their two- storey apartment at No. 120 M. Hizon Street, Caloocan City, when she heard a loud bang downstairs as if somebody forcibly opened the front door. Eight policemen suddenly entered her bedroom and conducted a search for about an hour. Accused-appellant inquired about their identities but they refused to answer. It was only at the police station where she found out that the team of searchers was led by SPO2 Teneros. The police team, along with Barangay Chairwoman Miguelita Limpo and Kagawad Bernie de Jesus, both of Barangay 64, Zone-6, District 2, Caloocan City, enforced the warrant and seized the following:[4]

- One (1) Salad Set marked Pyrex wrapped in a plastic containing white crysthalline (sic) substance or methamphetamine hydrochloride or shabu with markings by the undersigned inside the house of subjects' residence weighing (230) two hundred thirty (sic) grams of methamphetamine hydrochloride or shabu by Aida Abear-Pascual of NBI Forensic Chemist;
- Several plastics in different sizes;
- Two (2) roll of strip aluminum foil;
- Five (5) tooter water pipe and improvised and two burner improvised;
- Two (2) pantakal or measuring weight in shabu;
- Two (2) cellular phone motorola with markings;
- One (1) monitoring device with cord and with markings;

- Several pcs. with strip aluminum foil;
- Two (2) masking tip (sic) with markings;
- Twentee (sic) two thousand nine hundred ninetee (sic) pesos.

The police team also allegedly seized the amount of P180,000.00, a Fiat car, jewelry, set of keys, an ATM card, bank books and car documents.

Consequently, accused-appellant was charged with violation of Section 16, Article III, Republic Act No. 6425, otherwise known as the Dangerous Drugs Act of 1972, in an information[5] which reads:

That about 10:30 o'clock in the morning of 30 March 1996 at No. 122 SCL M. Hizon St., Kalookan City and within the jurisdiction of this Honorable court, the above-named accused grouping herself together with some other persons whose liabilities are still being determined in a preliminary investigation, conspiring, confederating and mutually helping one another, did then and there, wilfully, unlawfully and feloniously have in their possession, custody and/or control, methamphetamine hydrochloride popularly known as "shabu", a regulated drug, with a total weight of 230 grams, without the corresponding license and/or prescription to possess, have custody and/or control over the aforesaid regulated drug.

CONTRARY TO LAW.

Accused-appellant filed a motion to quash the search warrant[6] asserting that she and her live-in partner Federico Verona had been leasing an apartment unit at No. 120 M. Hizon Street, District 2, Caloocan City, Metro Manila, since 1995 up to the present as certified by the owner of the apartment unit.

On arraignment, accused-appellant pleaded not guilty,[7] after which, trial on the merits ensued.

The trial court denied the motion to quash and upheld the validity of the search warrant. It rendered a decision finding accused-appellant guilty as charged, the dispositive portion of which reads:

WHEREFORE premises considered, and the prosecution having established beyond an iota of doubt the guilt of the Accused for Violation of Sec. 16, Art. III, RA 6425 as amended by RA 7659 and considering that the total net weight of subject drugs consists of 230 grams, this Court in the absence of any modifying circumstance hereby imposes upon the Accused the penalty of reclusion perpetua and a fine of P1,000,000.00 pesos, and to pay the costs.

The period of Accused's preventive imprisonment shall be credited in full in the service of her sentence pursuant to Art. 29 of the Revised Penal Code.

Subject drugs and paraphernalia are hereby declared confiscated and forfeited in favor of the government to be dealt with in accordance with law.

The return to the Accused of the two (2) cellular phones, (Motorola Micro Fac) (sic) Nos. S-2968A and S-3123A, which were turned over by the Acting Branch Clerk of Court of Manila RTC, Br. 3 to her counterpart in this sala (Exh. "30") as well as the deposit of cash money in the amount of P22,990.00 with the Manila RTC Clerk of Court JESUS MANINGAS as evidenced by acknowledgment receipt dated 21 May 1996, are hereby ordered.

SO ORDERED.[8]

On appeal, accused-appellant raised the following assignment of errors:[9]

I. THE LOWER COURT ERRED IN CONVICTING THE ACCUSED OF THE CRIME OF ILLEGAL POSSESSION OF SHABU;

II. THE LOWER COURT ERRED IN ADMITTING THE EVIDENCE AGAINST THE ACCUSED;

III. THE LOWER COURT ERRED IN NOT FINDING THAT THE SEARCH CONDUCTED WAS ILLEGAL AND VIOLATIVE OF ACCUSED'S CONSTITUTIONAL RIGHTS;

IV. THE LOWER COURT ERRED IN NOT ACQUITTING THE ACCUSED AFTER FINDING THAT THE SEARCH WAS INDEED CONDUCTED AT A PLACE DIFFERENT FROM THAT DESCRIBED IN THE SEARCH WARRANT.

The appeal is impressed with merit.

Plainly, the basic issue submitted for resolution is the reasonableness of the search conducted by the police officers at accused-appellant's residence.

The trial court, in upholding the validity of the search, stated that:[10]

Re 3rd argument - the fact that the search warrant in question was served at apartment No. 120 and not at the specific address stated therein which is 122 M. Hizon St., Caloocan City will not by itself render as illegal the search and seizure of subject stuff seized by the operatives pursuant thereto. While it is true that the rationale behind the constitutional and procedural requirements that the search warrant must particularly describe the place to be searched is to the end that no unreasonable search warrant and seizure may not be made (sic) and abuses may not be committed, however, this requirement is not without exception. It is the prevailing rule in our jurisdiction that even a description of the place to be searched is sufficient if the officer with the warrant can with reasonable effort ascertain and identify the place intended (People vs. Veloso, G.R. No. L-23051, Oct. 20, 1925).

Significantly in the case at bar the implementing officer SPO2 Teneros was principally the concerned official who conducted an active surveillance on the Accused and subject house (Surveillance Report, Exh. "9") and pursued this case by filing the corresponding application for the issuance of a search warrant. Perforce, SPO2 TENEROS was thereby placed in a position enabling him to have prior and personal knowledge of particular house intended in the warrant which definitely refer to no other than the very place where the same was accordingly served.

Accused-appellant, on the other hand, maintains that the search was grossly infirm as the subject search warrant authorized the police authorities to search only No. 122 M. Hizon St., Caloocan City. However, the actual search was conducted at No. 120 M. Hizon St., Caloocan City.

The basic guarantee to the protection of the privacy and sanctity of a person, his home and his possessions against unreasonable intrusions of the State is articulated in Section 2, Article III of the Constitution, which reads:

THE RIGHT OF THE PEOPLE TO BE SECURE IN THEIR PERSONS, HOUSES, PAPERS, AND EFFECTS AGAINST UNREASONABLE SEARCHES AND SEIZURES OF WHATEVER NATURE AND FOR ANY PURPOSE SHALL BE INVIOABLE, AND NO SEARCH WARRANT OR WARRANT OF ARREST SHALL ISSUE EXCEPT UPON PROBABLE CAUSE TO BE DETERMINED PERSONALLY BY THE JUDGE AFTER EXAMINATION UNDER OATH OR AFFIRMATION OF THE COMPLAINANT AND THE WITNESSES HE MAY PRODUCE, AND PARTICULARLY DESCRIBING THE PLACE TO BE SEARCHED AND THE PERSONS OR THINGS TO BE SEIZED.

For the validity of a search warrant, the Constitution requires that there be a particular description of "the place to be searched and the persons or things to be seized." The rule is that a description of a place to be searched is sufficient if the officer with the warrant can, with reasonable effort, ascertain and identify the place intended and distinguish it from other places in the community. Any designation or description known to the locality that leads the officer unerringly to it satisfies the constitutional requirement.[11]

Specifically, the requisites for the issuance of a valid search warrant are: (1) probable cause is present; (2) such presence is determined personally by the judge; (3) the complainant and the witnesses he or she may produce are

personally examined by the judge, in writing and under oath or affirmation; (4) the applicant and the witnesses testify on the facts personally known to them; and (5) the warrant specifically describes the place to be searched and the things to be seized.[12]

The absence of any of these requisites will cause the downright nullification of the search warrants. The proceedings upon search warrants must be absolutely legal, for there is not a description of process known to the law, the execution of which is more distressing to the citizen. Perhaps there is none which excites such intense feeling in consequence of its humiliating and degrading effect. The warrants will always be construed strictly without, however, going the full length of requiring technical accuracy. No presumptions of regularity are to be invoked in aid of the process when an officer undertakes to justify it.[13]

The application for search warrant filed by SPO2 Teneros requested for authority to search specifically the premises of No. 122 M. Hizon St., Caloocan City. The application was accompanied by a sketch[14] of the area which bears two parallel lines indicated as 10th Avenue drawn vertically on the left-hand side of the paper. Intersecting these lines are two other parallel lines drawn horizontally and indicated as M. Hizon. Above and on the left-hand side of the upper parallel line of the lines identified as M. Hizon, is a square marked as “Basketball Court.” A similar drawing placed near the right-hand side of the upper parallel line is another square marked as “PNR Compound”. Beneath the lower parallel line of the lines marked as “M. Hizon” and right at the center is also a square enclosing an “X” sign marked as “122”, presumably No. 122 M. Hizon St., Caloocan City.

During the hearing for the application of the search warrant, police asset Dante Baradilla described the house to be searched as:

Bale dalawang palapag po, semi concrete, color cream na ang mga bintana ay may rehas na bakal at sliding at sa harap ay may terrace at may sasakyan sila na ginagamit sa pagdeliver ng shabu.[15]

The trial court then conducted an ocular inspection of the area. It turned out that No. 122 M. Hizon St., Caloocan City was a concrete two-storey residential building with steel-barred windows and a terrace. It was owned by a certain Mr. Joseph Ching. The house, however, bore no house number. The house marked No. 122 M. Hizon St., Caloocan City was actually two houses away from accused-appellant’s house at No. 120 M. Hizon St.

On the other hand, No. 120 Hizon St. was a compound consisting of three apartments enclosed by only one gate marked on the outside as No. 120. The different units within No. 120 Hizon St. were not numbered separately. Accused-appellant rented the third unit from the entrance which was supposedly the subject of the search. The entire compound had an area of approximately ninety (90) square meters. The second unit was located at the back of the first unit and the third unit was at the rear end of the compound. Hence, access to the third unit from M. Hizon Street was only through the first two units and the common gate indicated as No. 120. The occupants of the premises stated that they commonly use No. 120 to designate their residence.

In *People v. Veloso*, this Court declared that “even a description of the place to be searched is sufficient if the officer with the warrant can with reasonable effort, ascertain and identify the place intended.”[16] The description of the building in the application for a search warrant in *Veloso* as well as in the search warrant itself refer to “the building No. 124 Calle Arzobispo, City of Manila, Philippine Islands” which was considered “sufficient designation of the premises to be searched.”[17]

The prevailing circumstances in the case at bar are definitely different from those in *Veloso*. At first glance, the description of the place to be searched in the warrant seems to be sufficient. However, from the application for a search warrant as well as the search warrant itself, the police officer serving the warrant cannot, with reasonable effort, ascertain and identify the place intended precisely because it was wrongly described as No. 122, although it may have been located on the same street as No. 120. Even the description of the house by police asset Baradilla

referred to that house located at No. 122 M. Hizon St., not at No. 120 M. Hizon St.

The particularity of the place described is essential in the issuance of search warrants to avoid the exercise by the enforcing officers of discretion. Hence, the trial court erred in refusing to nullify the actions of the police officers who were perhaps swayed by their alleged knowledge of the place. The controlling subject of search warrants is the place indicated in the warrant itself and not the place identified by the police.[18]

It may well be that the police officer identified No. 120 M. Hizon St. as the subject of the actual search. However, as indicated in the witness' affidavit[19] in support of the application for a search warrant,[20] No. 122 M. Hizon St. was unmistakably indicated. Inexplicably, a few days after the search warrant was issued by the court and served at No. 120 M. Hizon St., SPO2 Teneros informed Judge Bayhon in the return of search warrant[21] that the warrant "was properly served at 122 M. Hizon St., Caloocan City, Metro Manila as indicated in the search warrant itself."

SPO2 Teneros attempted to explain the error by saying that he thought the house to be searched bore the address 122 M. Hizon St., Caloocan City instead of No. 120 M. Hizon St.[22] But as this Court ruled in *Paper Industries Corporation of the Philippines v. Asuncion*,[23] thus:

The police had no authority to search the apartment behind the store, which was the place indicated in the warrant, even if they really intended it to be the subject of their application. Indeed, the place to be searched cannot be changed, enlarged or amplified by the police, viz.:

"x x x. In the instant case, there is no ambiguity at all in the warrant. The ambiguity lies outside the instrument, arising from the absence of a meeting of the minds as to the place to be searched between the applicants for the warrant and the Judge issuing the same; and what was done was to substitute for the place that the Judge had written down in the warrant, the premises that the executing officers had in their mind. This should not have been done. It [was] neither fair nor licit to allow police officers to search a place different from that stated in the warrant on the claim that the place actually searched—although not that specified in the warrant—[was] exactly what they had in view when they applied for the warrant and had demarcated in their supporting evidence. What is material in determining the validity of a search is the place stated in the warrant itself, not what the applicants had in their thoughts, or had represented in the proofs they submitted to the court issuing the warrant. Indeed, following the officer's theory, in the context of the facts of the case, all four (4) apartment units at the rear of Abigail's Variety Store would have been fair game for a search.

The place to be searched, as set out in the warrant, cannot be amplified or modified by the officers' own personal knowledge of the premises, or the evidence they adduced in support of their application for the warrant. Such a change is proscribed by the Constitution which requires *inter alia* the search warrant to particularly describe the place to be searched as well as the persons or things to be seized. It would concede to police officers the power of choosing the place to be searched, even if it not be delineated in the warrant. It would open wide the door to abuse of the search process, and grant to officers executing a search warrant that discretion which the Constitution has precisely removed from them. The particularization of the description of the place to be searched may properly be done only by the Judge, and only in the warrant itself; it cannot be left to the discretion of the police officers conducting the search."

All told, the exclusionary rule necessarily comes into play, to wit:

Art. III, Sec. 3 (2), 1987 Constitution. -- ANY EVIDENCE OBTAINED IN VIOLATION OF THIS OR THE PRECEDING SECTION SHALL BE INADMISSIBLE FOR ANY PURPOSE IN ANY PROCEEDING.

Consequently, all the items seized during the illegal search are prohibited from being used in evidence. Absent these items presented by the prosecution, the conviction of accused-appellant for the crime charged loses its basis.

As the Court noted in an earlier case, the exclusion of unlawfully seized evidence was the only practical means of enforcing the constitutional injunction against unreasonable searches and seizures. Verily, they are the “fruits of the poisonous tree.” Without this exclusionary rule, the constitutional right would be so ephemeral and so neatly severed from its conceptual nexus with the freedom from all brutish means of coercing evidence.[24]

On another note, we find disturbing the variety of the items seized by the searching team in this case. In the return of search warrant, they admitted the seizure of cellular phones, money and television/monitoring device – items that are not within the palest ambit of shabu paraphernalia, which were the only items authorized to be seized. What is more disturbing is the suggestion that some items seized were not reported in the return of search warrant, like the Fiat car, bankbooks, and money. In an attempt to justify the presence of the car in the police station, SPO2 Teneros had to concoct a most incredible story that the accused-appellant, whose pregnancy was already in the third trimester, drove her car to the police station after the intrusion at her house even if the police officers had with them several cars.

A search warrant is not a sweeping authority empowering a raiding party to undertake a fishing expedition to seize and confiscate any and all kinds of evidence or articles relating to a crime.[25]

It need not be stressed anew that this Court is resolutely committed to the doctrine that this constitutional provision is of a mandatory character and therefore must be strictly complied with. To quote from the landmark American decision of *Boyd v. United States*: “It is the duty of courts to be watchful for the constitutional rights of the citizen, and against any stealthy encroachments thereon. Their motto should be *obsta principiis*.”[26]

Those who are supposed to enforce the law are not justified in disregarding the rights of the individual in the name of order. Order is too high a price to pay for the loss of liberty. As Justice Holmes declared: “I think it is less evil that some criminals escape than that the government should play an ignoble part.” It is simply not allowed in free society to violate a law to enforce another, especially if the law violated is the Constitution itself.[27]

WHEREFORE, in view of the foregoing, the decision of the Regional Trial Court, Branch 127, Caloocan City, convicting accused-appellant of violation of Section 16, Article III, Republic Act No. 6425 and sentencing her to suffer the penalty of reclusion perpetua and to pay a fine of P1,000,000.00 as well as the costs, is REVERSED and SET ASIDE. For lack of evidence to establish guilt beyond reasonable doubt, accused-appellant Annabelle Francisco y David @ Annabelle Tablan is ACQUITTED and is ordered immediately RELEASED from confinement, unless she is lawfully held in custody for another cause.

SO ORDERED.

Vitug, and Austria-Martinez, JJ., concur.

Davide, Jr., C.J., (Chairman), on official leave.

[1] Records of RTC Manila, p. 3.

[2] TSN, March 29, 1996, p. 5.

[3] Search Warrant, Records of RTC Manila, p. 4.

[4] Return of Search Warrant, Records of RTC Manila, p. 11.

[5] Rollo, p. 7.

[6] Records of RTC Caloocan, pp. 10-15.

[7] Order, Records of RTC Caloocan, p. 85.

[8] Penned by Judge Myrna Dimaranan Vidal of the Regional Trial Court of Caloocan City, Branch 127.

- [9] Rollo, p. 6.
- [10] Rollo, p. 32.
- [11] Uy v. Bureau of Internal Revenue, 344 SCRA 36 2000 .
- [12] Republic v. Sandiganbayan, 255 SCRA 438, 381-482 (1996), as cited in Paper Industries Corporation of the Phils. v. Asuncion, 307 SCRA 265 (1999).
- [13] Uy v. Bureau of Internal Revenue, 344 SCRA 36 2000.
- [14] Records of RTC Manila, p. 9.
- [15] Records of RTC Manila, p. 6.
- [16] People v. Veloso, 48 Phil. 169 1925.
- [17] Ibid.
- [18] Paper Industries Corporation v. Asuncion, 307 SCRA 273 (1999).
- [19] Records, p. 6.
- [20] Records, p. 2.
- [21] Return of Search Warrant, Records of RTC Manila, p. 11.
- [22] Appellee's Brief, Rollo, p. 81.
- [23] 307 SCRA 273 (1999) citing People v. Court of Appeals, 291 SCRA 400 1998.
- [24] 307 SCRA 273 (1999) citing People v. Court of Appeals, 291 SCRA 400 1998.
- [25] People v. Del Rosario, 234 SCRA 246 [1994].
- [26] Castro v. Pabalan, 70 SCRA 477 1976.
- [27] See Note 26.

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