

PEOPLE OF THE PHILIPPINES, PETITIONER, VS. CESAR O. DELOS REYES, RESPONDENT.

G.R. No. 140657. October 25, 2004

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

Before the Court is a petition for review on certiorari of the Decision[1] of the Court of Appeals (CA) in CA-G.R. SP No. 51759 granting the petition for certiorari of Cesar O. delos Reyes and nullifying Search Warrant No. 98-905 issued on June 18, 1998 by Judge Manuela F. Lorenzo of the Regional Trial Court (RTC) of Manila, Branch 43.

The Antecedents

On June 18, 1998, SPO3 Benjamin Nuguid of the Western Police District applied for a search warrant with the RTC of Manila, Branch 43, against Cesar Reyes alias “Cesar Itlog.” In support of his application, Nuguid submitted his affidavit and that of Alexis Tan, a housewife. Nuguid and Tan also testified in support of the application. After the court conducted examination of the said witnesses, it issued on even date Search Warrant No. 98-905 authorizing the search of the house allegedly under the possession and custody of one Cesar Reyes alias “Cesar Itlog,” at No. 2600 Oroquieta Street, Sta. Cruz, Manila, worded as follows:

SEARCH WARRANT

TO ANY PEACE OFFICER:

GREETINGS:

Upon sufficient showing of probable cause, after determination personally made by the undersigned on examination under oath of the applicant and his witness, by means of searching questions and answers, that respondent Cesar Reyes alias “Cesar Itlog” has in his possession, custody and control at the house and premises at 2600 Oroquieta St., Sta. Cruz, Manila, the following items:

- a) undetermined amount of methamphetamine hydrochloride; and
- b) drug paraphernalia

in violation of Republic Act No. 6425 as amended;

You are hereby commanded to make an immediate search at anytime of the day or night of the house and premises above-mentioned and forthwith seize and take possession of the above-cited items and to bring said items to the undersigned to be dealt with as the law require. Further, you are required to submit the return within ten (10) days from today.

GIVEN UNDER MY HAND AND SEAL this 18th day of June 1998 at the City of Manila.

MANUELA F. LORENZO

J u d g e[2]

The policemen conducted a search not only of the house at No. 2600 Oroquieta Street, Sta Cruz, Manila, which turned out to be the house of respondent Cesar delos Reyes, but also of the car and motorcycle owned by the latter, bearing Plate Nos. UBS 463 and TA 8077, respectively. The car and the motorcycle happened to be parked near the house.

As per the receipt of the property signed by Nuguid, the search of the house, the car and the motorcycle yielded the following:

That in the course of orderly search at the premises of Cesar Reyes alias “Cesar Itlog,” inside his room at the ground floor was a steel vault and when forced open it yields 13 transparent plastic bags containing [an] undetermined amount of white crystalline substance suspected to be Methamphetamine Hydrochloride or Shabu, three (3) weighing scales “Tamita” broad, drugs paraphernalia and 38 pcs. of Valium-10, also found atop his drawer; a .9mm “Smith & Wesson” pistol, Model 39mm with SN-A643638 with magazines loaded with ammo, one (1) loaded magazine of 9mm and 36 rounds of .25 cal. ammunition inside his drawer, one (1) plastic transparent bag containing white crystalline substance suspected to be Methamphetamine Hydrochloride or Shabu and three (3) 12-gauge shotgun ammo. His personal car, a black VITARA bearing plate No. UBS 463 parked beside his house was also search[ed] in the presence of [a] Bgy. Kagawad and found inside tucked beneath the driver’s seat are three (3) sealed transparent plastic bags containing white crystalline substance wrapped in a mail envelope suspected to be Methamphetamine Hydrochloride or Shabu and in his sport Honda Motorcycle 900cc with plate No. TA 8077 also yields one (1) transparent plastic sachet containing white crystalline substance suspected to be Methamphetamine Hydrochloride or Shabu at the motorbike back compartment.[3]

According to the Certification prepared by the NBI Forensic Chemistry Division, the crystalline substances contained in the transparent plastic bags which were seized in the respondent’s house, car and motorcycle tested positive for methamphetamine hydrochloride.[4]

Thereafter, two Informations were filed with the RTC of Manila, Branch 41, against the respondent for violation of Republic Act No. 6425, as amended by Rep. Act No. 8294, docketed as Criminal Cases Nos. 98-165628 and 98-165629, viz:

That on or about June 18, 1998, in the City of Manila, Philippines, the said accused without being authorized by law to possess or use any regulated drug, did then and there willfully, unlawfully and knowingly have in his possession and under his custody and control eighteen (18) transparent plastic bags (small and big) with [a] total net weight of eight hundred eighty-six point eight (886.8) grams of white crystalline substance known as “shabu” containing methamphetamine hydrochloride, a regulate drug, without the corresponding license or prescription thereof.

Contrary to law.[5]

...

That on or about June 18, 1998, in the City of Manila, Philippines, said accused did then and there willfully, unlawfully and feloniously have in his possession and under his custody and control of one (1) .9mm Smith & Wesson pistol, Model 39 with Serial Number-A643638 with two magazines loaded with ammunitions, 36 rounds of .25 caliber ammunition, three (3) 12-gauge shotgun ammunitions, without first having secured from the proper authorities the necessary license therefor.

Contrary to law.[6]

The respondent filed a motion to quash the informations on the following grounds: (a) as shown by their

testimony before the trial court, applicant Nuguid and his witness Tan had no personal knowledge of the factual allegations in their affidavits which were appended to the application for a search warrant; (b) the factual allegations contained in the said affidavits and their testimonies do not support a finding of probable cause for violation of Rep. Act No. 6425, as amended; and (c) Nuguid and Tan did not personally know the respondent as well as the latter's house because first, Tan identified the illicit drug seller as Cesar Reyes alias "Cesar Itlog" while the respondent's name is Cesar delos Reyes; and, second, the said witnesses described the house as consisting of a two-storey structure with one bedroom located at Oroquieta Street, Sta. Cruz, Manila.

On August 11, 1998, the trial court issued an Order denying the respondent's motion. The court also denied his motion for reconsideration of said order.

The respondent forthwith filed a petition for certiorari against Nuguid and the Public Prosecutor therein in the CA, alleging, inter alia, that the questions propounded by RTC Judge Manuela F. Lorenzo on Nuguid and Tan were leading and not searching. He also alleged that Judge Lorenzo delegated the examination of Tan to Nuguid, and allowed the latter to question her. He, likewise, reiterated that Tan and Nuguid did not know him personally because they identified him as "Cesar Reyes" when his full name was Cesar delos Reyes. Furthermore, contrary to the claim of Tan and Nuguid that his house was a two-storey edifice located at Oroquieta Street, Sta. Cruz, Manila, said house was only a one-storey structure located at No. 2600 Oroquieta Street, Sta. Cruz, Manila.

The respondent also assailed the search of his house, car and motorcycle on the ground that he was not there when the search was conducted and that no barangay officials were present as required by Section 7, Rule 126 of the 1997 Rules of Criminal Procedure.

On October 15, 1999, the CA rendered a Decision granting the petition and nullifying the search warrant. The decretal portion reads:

WHEREFORE, all the foregoing considered, the petition is GRANTED. The questioned Order dated January 11, 1999 as well as Search Warrant No. 98-905 dated June 18, 1998 are both hereby ANNULLED and SET ASIDE. Consequently, let a Writ of Prohibition be issued permanently enjoining respondents from using in evidence the articles seized by virtue of Search Warrant No. 98-905 in Criminal Case Nos. 98-165628 and 98-165629. The seized articles obtained by virtue of Search Warrant 98-905 consisting of regulated drug, guns and ammunitions, are hereby ORDERED delivered and turned over to the proper authorities concerned for disposition in accordance with law.

No costs.

SO ORDERED.[7]

The appellate court ruled that (a) the RTC delegated its duty to determine probable cause to the applicant; (b) the application for a search warrant was based on hearsay evidence; and (c) the application for the search warrant issued was filed more than four (4) weeks from the alleged time the offense took place; hence, was considered "stale."

After the denial of its motion for reconsideration of the said decision, the People of the Philippines filed the instant petition for review of the decision, alleging that –

THE COURT OF APPEALS [EIGHTH DIVISION] GRAVELY ERRED IN DECLARING SEARCH WARRANT NO. 98-905 NULL AND VOID DESPITE (i) THE UNMISTAKABLE MANNER BY WHICH THE INVESTIGATING JUDGE CONDUCTED A PERSONAL EXAMINATION OF THE APPLICANT AND HIS WITNESS; (ii) THE SEARCHING QUESTIONS PROPOUNDED AND ANSWERS OBTAINED; AND (iii) THE PERSONAL KNOWLEDGE OF THE APPLICANT AND HIS WITNESS OF THE FACTS THAT INEVITABLY JUSTIFIES THE ISSUANCE OF THE SEARCH WARRANT.[8]

The petitioner avers that Judge Lorenzo did not delegate the determination of probable cause to Nuguid before issuing the subject warrant. While she allowed Nuguid to propound questions on Alexis Tan, the same consisted of only three preliminary questions, and, as such, was inconsequential. The petitioner also asserts that the leading questions propounded by Judge Lorenzo on Tan does not detract from the fact that searching questions were also propounded on the witnesses, and that based on the entirety of such propounded questions and the latter's answers, there was probable cause for the issuance of a search warrant. The petitioner maintains that Tan had personal knowledge of the respondent's delictual acts which were in violation of Rep. Act No. 6425, as amended. Moreover, as gleaned from the affidavits of Tan and Nuguid and their collective testimonies before the RTC, the respondent's house was sufficiently described and identified, which description Nuguid was able to confirm through his surveillance of the house, the place where the crime was committed.

The petitioner further contends that although there was an interregnum of six (6) months from the time the commission of the crime came to the knowledge of Tan up to the filing of the application of the search warrant by Nuguid, the same did not obscure the finding of probable cause made by Judge Lorenzo.

The Court gave due course to the petition and required the parties to submit their respective memoranda.[9]

After a comprehensive and well-studied review of the Rollo and the records of the Court of Appeals, we resolve to deny the petition.

The Petition Was Filed Out of Time

The Office of the Solicitor General (OSG) admitted in the petition at bar that it received a copy of the assailed decision of the CA on October 21, 1999. Under Section 2, Rule 45 of the Rules of Court, the OSG had until November 5, 1999 within which to file its petition for review on certiorari. However, it did so only on November 25, 1999, long after the period therefor had lapsed. We reject as totally unacceptable the pretext of Solicitor Ma. Theresa Dolores C. Gomez-Estoesta that, because of heavy pressure of work,[10] the actual filing of the motion to file the petition at bar prepared on November 3, 1999, was "accidentally slighted." The Solicitor is mandated to insure that her motion for extension was filed within the period therefor.[11] Volume of work is a lame excuse.[12] She cannot escape the adverse effects of her forgetfulness.

Even if we gloss over the gross negligence of the OSG and resolve the petition on its merits, we find the same to be barren of merit.

A search warrant must (a) be based on probable cause; (b) contain a particular description of the place to be searched; and (c) must describe the items or property to be seized.[13] Probable cause comprehends such facts and circumstances as will induce a cautious man to rely upon and act in pursuance thereof.[14]

It bears stressing that the requirement of particularity is related to the probable cause requirement in that, at least, under severe circumstances, the lack of a more specific description will make it apparent that there has not been a sufficient showing to the Judge that the described items are to be found in a particular place. Probable cause must first focus on a specific location. If the applicant or official is unable to state with sufficient precision the place to be searched and why he reasonably believes that contraband or evidence of criminal activity will be found therein, it is highly doubtful that he possesses probable cause for a warrant.[15]

In issuing a search warrant, the Judge must strictly comply with the requirements of the Constitution and the statutory provisions.[16]

A search warrant shall not 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.[17] Before issuing a search warrant, the Judge must personally examine, in the form of searching questions and answers, in writing and under oath, the complainant and his witnesses he may produce, on facts personally known to them.[18]

The mandate of the Judge is for him to conduct a full and searching examination of the complainant and the witnesses he may produce. In the absence of a rule to the contrary, the determination of probable cause cannot be delegated by the Judge, in part, or in whole, regardless of the qualifications of the person on whom reliance is placed. It is not permissible for the Judge to share the required determination with another.[19]

The searching questions propounded to the applicant and the witnesses must depend on a large extent upon the discretion of the Judge. Although there is no hard-and-fast rule as to how a Judge may conduct his examination, it is axiomatic that the said examination must be probing and exhaustive and not merely routinary, general, peripheral or perfunctory.[20] He must make his own inquiry on the intent and factual and legal justifications for a search warrant. The questions should not merely be repetitious of the averments not stated in the affidavits/deposition of the applicant and the witnesses.[21] If the Judge fails to determine probable cause by personally examining the applicant and his witnesses in the form of searching questions before issuing a search warrant, it constitutes grave abuse of discretion.[22]

A search warrant proceeding is independent of any criminal case. It is *ex parte* and non-adversarial.[23] Hence, the Judge acting on an application for a search warrant is not bound to apply strictly the rules of evidence. As ruled in *Brinegar v. United States*: [24]

The inappropriateness of applying the rules of evidence as a criterion to determine probable cause is apparent in the case of an application for a warrant before a magistrate, the context in which the issue of probable cause most frequently arises. The ordinary rules of evidence are generally not applied in *ex parte* proceedings, partly because there is no opponent to invoke them, partly because the Judge's determination is usually discretionary, partly because it is seldom that, but mainly because the system of evidence rules was devised for the special control of trials by jury.

The Judge is not proscribed, at all times, from propounding leading questions on the applicant and the witnesses he may produce. Indeed, the Judge is allowed to propound leading questions if, for instance, the witness is a child or is suffering from mental illness, or if the questions are preliminary or clarificatory, or when there is difficulty in getting direct and intelligent answers from the witness who is ignorant.

But it can hardly be justifiably claimed that, by propounding leading questions only on the complainant and the witnesses he may produce, the Judge thereby conducts probing and exhaustive examination. After all, a leading question is one which suggests to the witness the answer which the examining party desires.[25] By propounding leading questions, the Judge thereby puts the words or answers in the mind of the witness to be echoed back.[26]

It bears stressing that the determination of the existence of probable cause must be made by a detached and neutral Judge.[27] If he resorts to propounding leading questions to the applicant and his witnesses to determine probable cause, the Judge may be perceived as being partial, or even in cahoots with the officers engaged in the often competitive enterprise of ferreting out crime.[28]

A search warrant is not thereby rendered invalid; nor is a finding of probable cause proscribed merely because the Judge propounded leading questions on the applicant and the witnesses he produces. The entirety of the questions propounded by the court and the answers thereto must be considered and calibrated by the Judge.

The Judge Allowed the
Applicant to Examine

Tan, His Witness, and Failed
to Propound Searching Questions

The transcript of the stenographic notes taken when Nuguid and Tan testified is quoted, in toto, infra:

COURT

Who is the applicant here?

SPO3 NUGUID:

I am the applicant, Your Honor.
(Swearing the applicant) -

COURT:

Please stand.

COURT:

Q You are applying for a search warrant.

A Yes, Your Honor.

Q Where is this place to be searched?

A At no. 2006 Oroquieta St., Sta. Cruz, Manila, Your Honor.

Q Is there any person there whom you would want to search?

A Yes, Your Honor.

Q Who?

A In the name of Cesar Reyes, Your Honor, alias "Cesar Itlog."

Q Why, what is it he is keeping in his custody?

A Undetermined quantities of suspected methamphetamine hydrochloride also known as "Shabu."

Q How do you know that such things exist in his place?

A Thru my witness, Your Honor, we were able to test-buy and examine the contents in a plastic sachet.

Q Why, what did your witness do, if any?

A I asked my witness to buy from Cesar Reyes alias "Cesar Itlog" and she was able to buy the subject shabu.

Q How did you know that your witness was able to buy from Cesar Reyes and not from other source?

A She told me and according to her she got it from Cesar Reyes.

Q Who is this witness you are referring to?

A Alexis Tan, Your Honor.

Q Where is she?

A She is the one, Your Honor. (Witness pointing to a lady who answered when asked of her name as Alexis Tan).

COURT:

Alright, I will ask her.

(Swearing Ms. Tan) –

Q Do you swear to tell the truth and nothing but the whole truth?

A Yes, I do.

Q Please state your name, age and other personal circumstances.

A ALEXIS TAN, 34 years old, married, jobless and with address c/o WBD Drug Enforcement Section, U.N. Ave., Manila.

Q What is your occupation?

A None for the moment, Your Honor.

Q What was your occupation, if any, before?

A A plain housewife, Your Honor.

COURT:

(to SPO3 Nuguid) –

You want to ask her questions on record?

SPO3 NUGUID:

Your Honor, she has her statement ...

COURT:

Yes, but for the record, you may ask her.

SPO3 NUGUID:

Yes, Your Honor.

Q Do you personally know one Cesar Reyes alias “Cesar Itlog?”

A Yes, Sir.

Q How long have you known Cesar Reyes?

A Maybe around 6 months ago.

Q How did you come to know him?

A I was introduced to him by a friend, Sir.

COURT:

Q What was the purpose of introducing you to him by your friend?

A It started when I was separated from my husband when my friend taught me how to use shabu, Your Honor.

Q When you were separated from your husband, what has it something to do with introducing you to Cesar

Reyes?

A Thru influence, Your Honor.

Q What connection does it have?

A They know each other, Your Honor. My friend knows that Cesar Reyes is selling shabu, Your Honor.

Q Did you really find out if Cesar Reyes alias “Cesar Itlog” is selling shabu?

A Yes, Your Honor.

Q How?

A At first, I was accompanied by my friend, but later I went there on my own alone.

Q You mean, this Cesar Reyes is really in the business if (sic) selling shabu?

A Yes, Your Honor.

Q Knowing his prohibited ((sic) activity, does he also sell to any other people?

A Those known to him, Ma’am.

Q You consider yourself as very well known to him?

A Yes, Your Honor.

Q Have you also seen him in [the] company of that friend of yours who introduced you to him?

A Yes, Ma’am for many times.

Q And you have been going to this place of Cesar Reyes several times also.

A Yes, Your Honor, I bought shabu from him.

Q How did he sell it to you?

A I will call him first through the phone before I go to him.

Q You make an appointment with him first?

A Yes, Your Honor.

Q Where is this place?

A At Oroquieta Street, Sta. Cruz, Manila, Your Honor.

Q Everytime you go and buy shabu from him, is it always ready for sale to you?

A Yes, Your Honor.

Q You mean he has always in his custody and does not run out of stock?

A There was one time when I called him if he could sell one for me he told me through the phone to call back after an hour because he will be getting it from other source.

Q Did you call him back after an hour?

A Yes, Your Honor, and he told me to come over to his place.

Q How much quantity (sic) did you buy from him?

A For P3,000.00, Your Honor.

Q I am referring to the quantity.

A 3 grams, Your Honor, he does not sell lower than 3 grams, Your Honor, it must be 3 grams and above.

Q You have not yet bought from him only one gram?

A No, Your Honor, not less than 3 grams.

Q During the time you bought shabu from Cesar Reyes, were you the only customer?

A He entertains customer (sic) one at a time, Your Honor, but he has several customers.

Q How do you know that he has several customers?

A Because he also talked [to] callers on the phone. During the time I bought shabu from him, he also talked to somebody on the phone.

Q That is only. . .

Q Since when did you start buying shabu from him?

A Between December 1997 and January 1998, Your Honor.

Q The shabu you had been buying from him, do you use it or sell it to some other person?

A No, Your Honor, I do not sell it.

Q You use it?

A Yes, Your Honor.

Q You know the house of Cesar Reyes after confirmation, in what particular part of the house does Cesar Reyes entertain you?

A In [the] living room, Your Honor.

Q When you go to his house, you usually go and see him in that (sic) living room and not elsewhere before he comes out from that house?

A Normally, Your Honor, when I go to his house, he would open the door for me and would say “come in” then ask me “how much.” If, for example, I would say 3 grams, he would just go to his room and comes out with the item.

Q In other words, everytime you go to his place to buy shabu she (sic) is there ready to entertain you?

A Yes, Your Honor.

Q Is it not that he is still busy conversing with other people when he comes out from his room?

A When I go to his house, he is there ready to open for me (sic) he knows I am coming.

Q That is always the case, he is ready to open the door for you?

A There was also a time that his maid opened the door for me.

Q Aside from the maid, did you see other people inside that house?

A His family- his wife and a baby then he would usually let them stay away from the living room or just get inside the room.

Q What kind of a house does Cesar Reyes have?

A A two-story (sic) house, Your Honor.

Q Not an apartment?

A No, Your Honor.

Q A single detach (sic) house?

A Yes, Your Honor.

Q Is there any guard on (sic) the main gate of the house?

A None, Ma'am, it is just an ordinary house.

Q There are no people you usually see when you go there?

A There are some members of the family but usually he let (sic) them stay away from the living room.

Q Was there an occasion when somebody arrives when you see him?

A None, Your Honor.

Q So, this is a one-on-one affair.

A Yes, Your Honor.

Q How do you know that these things are stored in his house?

A Everytime I bought shabu from him, he would get the money from me and then get inside his room to get a sachet of shabu and give it to me.

Q Are you sure that these things (shabu) are stocked in his house permanently or maybe they are just brought there from somewhere because he knows you are coming to buy and get it?

A There was once when I called him by phone and he asked me "how much" and I told him I will buy for (sic) P4,000.00 worth of shabu and he said "you just proceed to my place by 2 o'clock in the afternoon," I will have to get it from other source."

Q He got it from other source for you?

A According to him, if it is by large (sic) quantity and he will just repack it in his house.

Q He himself told you?

A Yes, Your Honor, but he does not reveal from whom.

Q You have no idea?

A No, Your Honor.

Q You did not ask him?

A No, Your Honor.

Q You used to transact business on the ground floor of his house?

A Yes, Your Honor.

Q Did you notice if his house has several rooms?

A There is one room on the ground floor, Ma'am, but sometimes he also goes upstairs and comes down with the shabu item. Most of the time of the transaction just on the ground floor.

Q Is there a partition in that particular room?

A It is just a single room, Ma'am.

Q Did you not notice if there are other people in that room in the ground floor?

A I did not notice but there was one time when I saw a child but he let that child stay away from the visitor.

Q You mean this room where you saw him come out serve as storeroom of shabu?

A Yes, Ma'am.

Q Did he tell you about it?

A Yes, Ma'am.

Q Why did he tell you?

A Because when he entertained me, he left me for the moment and I said "where do you go" and he said "I will get inside that room to get the shabu."

Q So, since you were requested by the police officer to purchase shabu from Cesar Reyes, how many times?

A That was the only time, Your Honor.

COURT: (to SPO3 NUGUID)

Q Did you make surveillance in that place?

A Yes, Your Honor, we made a surveillance after the test-buy.

Q What did you do?

A During the surveillance, we brought several witnesses.

Q Did you notice people going there to the house of Cesar Reyes?

A Yes, Your Honor.

Q And what have you observed?

A Some customers are even using cars.

Q You do not know if those people were visitors or not?

A We are not sure if those people are visitors of Cesar Reyes because we have no contact inside his house.

COURT: (to Ms. TAN) -

Q When did you buy shabu from Cesar Reyes?

A June 13, 1998, Your Honor.

Q This Cesar Reyes at the time did not have any idea that you were there being sent by the police officers?

A No, Your Honor.

Q Did you really go to his place and successfully bought the shabu from Cesar Reyes?

A Yes, Your Honor.[29]

The questions propounded on Nuguid by Judge Lorenzo were not searching and probing, but merely superficial and perfunctory. The records show that in his application for a search warrant, Nuguid described the place to be searched as the house located at “No. 2600 Oroquieta Street, Sta. Cruz, Manila,” under the name of Cesar Reyes alias “Cesar Itlog.” However, the Judge ignored this inconsistency and did not bother to inquire from Nuguid why he applied for a search warrant of the premises at No. 2600 Oroquieta Street, Sta. Cruz, Manila, when the house where Tan had apparently purchased shabu from the respondent was located at No. 2006 Oroquieta Street, Sta. Cruz, Manila.

Nuguid declared that he and the police officers conducted a test-buy on June 13, 1998, using Tan as the buyer for said purpose. The ordinary procedure for a test-buy is for the police officers to monitor and observe, at a distance, the sale of illicit drugs by the suspect to the buyer. In this case, when the Judge asked Nuguid how Tan was able to buy shabu from the respondent, Nuguid reported that Tan told him that he got shabu from Cesar Reyes, implying that he did not witness the test-buy; however, Nuguid also declared that he was at a distance when the test-buy was conducted.

The Judge also failed to ask Nuguid the circumstances upon which he and the other police officers came to know how Tan was able to purchase shabu from the respondent. Inexplicably, Nuguid conducted a search of the house of the respondent only after the test-buy and not before then. However, the Judge failed to inquire why the application for a search warrant was made only on June 18, 1998, or after the lapse of five days from the time the test-buy was conducted on June 13, 1998. The Judge also failed to ask Nuguid why no surveillance was made before the test-buy and whether any report on the surveillance operations conducted on the respondent’s house after the test-buy was submitted.

Even a cursory reading of the transcript will show that most of the questions propounded on Tan by the Judge were leading questions, and that those which were not leading were merely based on or related to the answers earlier given to the leading questions. By asking such leading questions, the Judge thereby supplied the answers to her questions. Although Tan testified that she used to buy at least three (3) grams for P3,000.00 from the respondent during the period of December 1997 to January 1998, the Judge did not even bother to inquire from Tan, a plain housewife who was separated from her husband, how she could afford to purchase shabu for P3,000.00 on several occasions during the period of December 1997 to January 1998.

Indeed, there was an interregnum of more than four (4) months from the time Tan purchased shabu from the respondent up to the time when the test-buy was supposedly made. However, the Judge was not even curious as to why Tan failed to purchase shabu from the respondent for such a long period of time, considering that from her testimony, Tan made it plain that she was a regular user of shabu. The Judge should have asked Tan why she did not buy shabu from the respondent for more than four months.

The Judge even failed to inquire from Tan when and under what circumstances Nuguid was able to meet with her to discuss how she would be utilized for the test-buy. The curiosity of the Judge was not even aroused when, in

answer to her question on the location of the house of “Cesar Reyes,” Tan replied that it was located at Oroquieta Street, Sta. Cruz, Manila, without specifying the house number. At the very least, it behooved the Judge to require Tan to specify the house number if only to test her credibility. And yet, immediately after propounding the questions on Tan and Nuguid, the Judge announced that she was issuing the search warrant.

...

A June 13, 1998, Your Honor.

Q This Cesar Reyes at the time did not have any idea that you were there being sent by the police officers?

A No, Your Honor.

Q Did you really go to his place and successfully bought the shabu from Cesar Reyes?

A Yes, Your Honor.

COURT

(to SPO3 NUGUID) –

Q During the time that Alexis Tan was being sent there to buy shabu from Cesar Reyes, where were you then?

A We were at a distance, Your Honor.

COURT:

Do you have something to add questions from her?

SPO3 NUGUID:

No more at the moment, Your Honor.

COURT:

That will be all for now and the Court will issue the Search Warrant.[30]

The Judge allowed and even egged on Nuguid to examine Tan and elicit facts and circumstances from her relating to the alleged purchase of shabu from the respondent. What is so worrisome is that Nuguid, besides being the applicant, was the same police officer who asked Tan to buy shabu from the respondent and the one who, along with other officers, arrested the respondent. That Nuguid propounded comparatively fewer questions on Tan is beside the point. By allowing Nuguid himself to examine Tan, the Judge thereby compromised her impartiality.

We echo, once again, the oft-cited caveat of the Court:

It has been said that of all the rights of a citizen, few are of greater importance or more essential to his peace and happiness than the right of personal security, and that involves the exemption of his private affairs, books, and papers from inspection and scrutiny of others. While the power to search and seize is necessary to the public welfare, still it must be exercised and the law enforced without transgressing the constitutional rights of the citizens, for the enforcement of no statute is of sufficient importance to justify indifference to the basic principles of government.

Thus, in issuing a search warrant, the Judge must strictly comply with the requirements of the Constitution and the statutory provisions. A liberal construction should be given in favor of the individual to prevent stealthy encroachment upon, or gradual depreciation of the rights secured by the Constitution. No presumption of regularity is to be invoked in aid of the process when an officer undertakes to justify it.[31]

IN LIGHT OF ALL THE FOREGOING, the petition is DENIED.

SO ORDERED.

Puno, (Chairman), Austria-Martinez, Tinga, and Chico-Nazario, JJ., concur.

[1] Penned by Associate Justice Martin S. Villarama, Jr., with Associate Justices Angelina Sandoval-Gutierrez (now an Associate Justice of the Supreme Court), and Romeo A. Brawner, concurring.

[2] CA Rollo, p. 23.

[3] Id. at 38.

[4] Id. at 37.

[5] Id. at 25.

[6] Id. at 27.

[7] Rollo, p. 38.

[8] Id. at 11-12.

[9] Id. at 164.

[10] The Solicitor made the following as her excuse for the late filing of the instant petition:

- On November 3, 1999, a Motion for Extension of Time to File Petition for Review on Certiorari (seeking a 30-day extension from November 5, 1999 or until December 5, 1999) has been prepared by the undersigned Solicitor for its eventual filing. Due to the fact, however, that such Motion for Extension coincided with the successive drafting and preparation of a Comment in *Maruhom v. COMELEC*, G.R. No. 139357 and a Consolidated Brief in *People v. Sicad et al.*, G.R. No. 133833, the actual filing of said Motion for Extension was accidentally slighted since the final draft was unintentionally inundated in the deluge of records and paperwork that jammed the table of the undersigned Solicitor.

- All the while, however, the undersigned Solicitor was of the impression that the Motion for Extension was actually filed. The mind fulfilled its task; a physical realization of such task, however, loomed a shortcoming (Rollo, pp. 4-5).

[11] *Adaza v. Barinaga*, 104 SCRA 684 (1981).

[12] *Velasco v. Ortiz*, 184 SCRA 303 (1990).

[13] *Taylor v. State*, 974 S.W.2d 851 (1998).

[14] *Nolasco v. Paño*, 139 SCRA 152 (1985).

[15] *Taylor v. The State of Texas*, 974 S.W.2d 851 (1998).

[16] *Mata v. Bayona*, 128 SCRA 388 (1984).

[17] Section 4, Rule 126, Revised Rules of Criminal Procedure.

[18] Section 5, Rule 126, Revised Rules of Criminal Procedure.

[19] *People v. Potwora*, 397 N.W. 2d 361 (1979); *Bache & Co. (Phils), Inc. v. Ruiz*, 37 SCRA 823 (1971).

- [20] Roan v. Gonzales, 145 SCRA 687 (1986).
- [21] Nolasco v. Paño, *supra*.
- [22] Silva v. Presiding Judge, RTC of Negros Oriental, Br. 33, 203 SCRA 140 (1991).
- [23] Aguilar v. State of Texas, 12 L.ed.72 (1964).
- [24] 93 L.ed.1879 (1949), citing Wigmore, Evidence (3d ed., 1940) 19.
- [25] Section 10, Rule 132, Revised Rules of Court.
- [26] Underskill, Criminal Evidence, 5[th] ed., p. 1199.
- [27] Kislin v. State, 429 F.2d 950 (1970).
- [28] Aguilar v. State of Texas, 12 L.ed. 2d 72 (1964).
- [29] CA Rollo, pp. 41-49.
- [30] CA Rollo, p. 49.
- [31] Mata v. Bayona, *supra*.

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