

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. EDEN DEL CASTILLO, APPELLANT.

G.R. No. 153254. September 30, 2004

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

Eden del Castillo appeals from the decision dated June 27, 2001[1] of the Regional Trial Court of Cebu City, Branch 18, in Criminal Case No. CBU-54778, finding her guilty of violation of Section 16, Article III of R.A. No. 6425, otherwise known as Dangerous Drugs Act of 1972, as amended; and imposing on her the penalty of reclusion perpetua.

She was indicted under an Information dated August 2, 2000 which reads:

That on or about the 31[st] day of July 2000, at about 10:30 A.M., in the City of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the said accused, with deliberate intent and without being authorized by law, did then and there have in her possession and control or use the following:

- A- Three (3) big heat sealed plastic packs of white crystalline substance weighing 294.86 grams;
- B- Eight (8) medium heat sealed plastic packs of white crystalline substance weighing 12.33 grams;
- C- Fifty three (53) heat sealed plastic packets of white crystalline substance weighing 4.75 grams

locally known as “shabu”, containing Methylamphetamine Hydrochloride, a regulated drug, without the corresponding license or prescription.

CONTRARY TO LAW.[2]

Upon her arraignment, appellant, with the assistance of counsel, pleaded not guilty to the crime charged.[3] Trial thereafter ensued.

The prosecution presented the following witnesses: PO3 Leopoldo Bauzon, PO3 Alfredo Petallar, P/Insp. Mutchit Salinas and PO2 Brazilio Borinaga. Their testimonies proved the following facts:

On July 21, 2000, a search warrant was issued by Judge Isaias Dicdican of the Regional Trial Court, Branch 11, Cebu City, authorizing the search and seizure of shabu and its paraphernalias in the house of appellant located in M. Borgonia Street, Hayco, Mabolo, Cebu City.[4] At about 10:30 in the morning of July 31, 2000, a team composed of Police Chief/Insp. Pablo Gacayan Labra II, Bauzon, Petallar and Borinaga, PO2 Ricardo Baclayon, Jr. and PO1 Jeric Cuyos Toring, went to the subject house to implement the search warrant.[5] The police officers accompanied by three barangay tanods, namely: Wilfredo Wasawas, Mansueto Toong and Leonico Sagosa, entered the house, saw appellant and served the warrant on her.[6] At that time, appellant was with her grandmother Elena Rivalar Garcia, the registered owner of the house, and Servando del Castillo, appellant’s brother, in the living room. The police officers “pressed” them by telling them not to move and they were asked to just sit down while the search was on-going.[7]

The raiding team divided themselves into two searching groups. The first group composed of Bauzon, Toring and one barangay tanod searched the upper portion of the house and found three large plastic packs of white crystalline substance.[8] The second group, composed of Baclayon and Borinaga, searched the ground floor and found eight medium heat-sealed plastic packs of white crystalline substance and fifty-three heat-sealed plastic packets of white crystalline substance; two disposable lighters, one pair of scissors, one tooter, one puller and an improvised hacksaw.[9] Servando voluntarily surrendered five small packs of white crystalline substance.[10] Appellant was arrested and informed of her constitutional rights, specifically, the right to counsel to which she replied that she has a lawyer who will represent her.[11] Petallar then prepared an inventory of the seized articles and appellant was made to sign the same.[12] PO3 Bauzon and PO3 Petallar explained that the inventory receipt was dated July 24, 2000 although the raid was conducted on July 31 because their office had earlier prepared the blank form.[13] A copy of the inventory was given to a tanod[14] and thereafter appellant and Servando were brought to the police station while the items seized were brought to the Philippine National Police (PNP) Crime Laboratory for examination.[15]

P/Insp. Mutchit Salinas, chemist of the PNP Regional Crime Laboratory Office, who conducted the laboratory test on these substances confirmed that the specimens submitted for testing were positive for the presence of methamphetamine hydrochloride known as shabu.[16]

The defense presented the following witnesses: Elena R. Garcia, Jaime Garcia and appellant herself who testified to establish the following facts:

The house subject of the search on July 31, 2000 was owned by Elena, appellant's grandmother, and her late husband, Jose Garcia, as evidenced by a copy of Tax Declaration No. 01-30651 in the name of Jose Garcia;[17] that only Brent Lepiten, Elena's grandson, was living in the house while appellant was living with her parents in San Vicente Village, Wireless, Mandaue City, a distance of about five kilometers from Elena's place.[18] On July 31, 2000, Elena, who was in the upper portion of the house with her son, Jaime, who happened to sleep in her house the night before because he had a drinking spree with some friends, went downstairs because of the thudding sound from their door.[19] Appellant, who was in the house to visit her grandmother, was having breakfast when the door was opened. Several men entered the house and instructed them to sit down. Two of these men carrying an envelope went upstairs and woke up Jaime Garcia.[20] Jaime then went downstairs and these two men without the envelope followed two minutes later.[21] Appellant and the other occupants were told to wait for the arrival of the tanods. Then, the same two men who earlier went upstairs went up again with a tanod and when they came down, they had with them an envelope, the contents of which were spread on the table and were listed down.[22] Appellant was then asked to sign a paper where a listing of the contents of the envelope was made but she requested to contact her lawyer which was denied.[23] She was forced to sign otherwise she would be handcuffed.[24] The list of the inventory was neither read to her nor did they leave a copy for her or to any of the occupants.[25] Appellant declared that the search warrant was served on her but she never read it nor was it read to her.[26]

On June 27, 2001, the trial court rendered its assailed decision[27] finding appellant guilty as charged. The decretal portion of the decision reads:

WHEREFORE, finding accused Eden del Castillo guilty beyond reasonable doubt of the crime charged, the accused is hereby sentenced to suffer the penalty of Reclusion Perpetua. The seized or confiscated items are declared forfeited in favor of the government and the same shall be disposed of in the manner allowed by law.[28]

In convicting appellant, the trial court ratiocinated:

After a careful analysis of the testimonial and documentary evidence on record, the Court is of the well considered view and so holds that the prosecution was able to establish the fact that the accused had indeed, with deliberate intent and without being authorized by law, in her possession and control or use on or about July 31, 2000 at about 10:30 A.M. the following:

- A - Three (3) big heat sealed plastic packs of white crystalline substance weighing 294.86 grams;
- B - Eight (8) medium heat sealed plastic packs of white crystalline substance weighing 12.33 grams;
- C - Fifty three (53) heat sealed plastic packets of white crystalline substance weighing 4.75 grams

locally known as “shabu”, containing Methylamphetamine Hydrochloride, a regulated drug, without the corresponding license or prescription. The members of the Philippine National Police (PNP), by virtue of a Search Warrant issued against Eden Garcia del Castillo by Judge Isaias Dicdican and implemented on July 31, 2000 resulted in the acquisition of said items. The items were submitted to the PNP Crime Laboratory for analysis and the result is positive for the presence of Methylamphetamine Hydrochloride, or locally known as shabu. No less than the accused signed the Receipt for Confiscated Articles signifying that the Raiding Team of the Philippine National Police had actually seized and confiscated certain items or articles from the herein accused. The prosecution then was able to establish the guilt of the accused beyond reasonable doubt.

Section 16 of Article III of Republic Act No. 6425, as amended, known as the Dangerous Drugs Act of 1972, as amended by R.A. 7659 reads as follows:

SEC. 16. Possession or Use of Regulated Drugs. – The penalty of reclusion perpetua to death and a fine ranging from five hundred thousand pesos to ten million pesos shall be imposed upon any person who shall possess or use any regulated drug without the corresponding license or prescription, subject to the provisions of Section 20 hereof.

Section 20, Article IV of Republic Act No. 6425, as amended, known as the Dangerous Drugs Act of 1972, as amended by R.A. 7659 reads as follows:

SEC. 20. Application of Penalties, Confiscation and Forfeiture of the Proceeds or Instruments of the Crime. – The penalties for offenses under Sections 3, 4, 7, 8 and 9 of Article II and Sections 14, 14-A, 15 and 16 of Article III of this Act shall be applied if the dangerous drugs involved is in any of the following quantities:

...

3. 200 grams or more of shabu or methylamphetamine hydrochloride; . . .[29]

Hence, the instant appeal with the following assignment of errors:[30]

I

THE LOWER COURT ERRED IN FAILING TO STATE IN ITS JUDGMENT A CLEAR AND DISTINCT FINDINGS OF FACTS (WHICH) PROVED THAT ACCUSED DID NOT OWN THE HOUSE WHICH WAS SEARCHED.

II

THE LOWER COURT ERRED IN FAILING TO STATE IN ITS JUDGMENT THAT THE ARTICLES SEIZED BY VIRTUE OF A SEARCH WARRANT WERE NOT TURNED OVER TO THE ISSUING COURT IN VIOLATION OF THE LAW.

III

THE LOWER COURT ERRED IN NOT FINDING THAT THE RAIDING TEAM FAILED TO ISSUE A DETAILED RECEIPT OF SEIZED ARTICLES AND TO GIVE A COPY THEREOF TO THE LAWFUL OCCUPANT IN VIOLATION OF THE LAW.

IV

THE LOWER COURT ERRED IN NOT FINDING THAT BY THE RAIDING TEAM ORDERING ACCUSED TO SIGN THE INVENTORY AFTER THE ARREST WITHOUT THE ASSISTANCE OF COUNSEL IS VIOLATIVE OF HER CONSTITUTIONAL RIGHT.

V

THE LOWER COURT ERRED IN NOT FINDING THAT THE RAID WAS IN VIOLATION OF THE PRIVACY OF ELENA R. GARCIA, AS OWNER OF THE HOUSE BEING SEARCHED, AND NOT THE HOUSE OF ACCUSED EDEN DEL CASTILLO.

VI

THE LOWER COURT ERRED IN NOT ACQUITTING THE ACCUSED.

The Office of the Solicitor General (OSG) filed a Manifestation and Motion in lieu of appellee's brief praying that the decision under consideration be reversed and set aside and that the appellant be acquitted.

We agree with the OSG. The appeal is meritorious.

Section 16 of Article III of the Dangerous Drugs Act of 1972, as amended, provides:

SEC. 16. Possession or Use of Regulated Drugs. – The penalty of reclusion perpetua to death and a fine ranging from five hundred thousand pesos to ten million pesos shall be imposed upon any person who shall possess or use any regulated drug without the corresponding license or prescription, subject to the provisions of Section 20 hereof.

The essential elements of the crime of possession of regulated drugs are the following: (a) the accused is found in possession of a regulated drug; (b) the person is not authorized by law or by duly constituted authorities; and, (c) the accused has knowledge that the said drug is a regulated drug.

In *People vs. Tira*,^[31] we explained the concept of possession of regulated drugs, to wit:

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 possidendi*) 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. The accused cannot avoid conviction if his right to exercise control and dominion over the place where the contraband is located, is shared with another.

Thus, conviction need not be predicated upon exclusive possession, and a showing of non-exclusive possession would not exonerate the accused. Such fact of possession may be proved by direct or circumstantial evidence and any reasonable inference drawn therefrom. However, the prosecution must prove that the accused had knowledge of the existence of the presence of the drug in the place under his control and dominion and the character of the drug. Since knowledge by the accused of the existence and character of the drugs in the place where he exercises dominion and control is an internal act, the same may be presumed from the fact that the dangerous drugs is in the house or place over which the accused has control or dominion, or within such premises in the absence of any satisfactory explanation.

Prosecution witnesses failed to establish that the house where the shabu and other shabu paraphernalias were found belongs to appellant. On the other hand, defense evidence clearly showed that the subject house belongs to appellant's grandmother, Elena Garcia, who testified in direct examination as follows:

ATTY. RIVERAL:

Q

You stated in your personal circumstances that you are a resident of Mabolo, Cebu City. Do you own a house?

A

Yes, I owned a house.

Q

With whom are you living therewith?

A

My grandson.

Q

What is the name of your grandson living with you at that house?

A

Brent Lepiten.

Q

You stated that you owned a house in Mabolo, Cebu City which was the subject of the search. Do you have any evidence to show that you owned that house?

A

Yes, I have.

Q

Showing to you this machine copy which is Tax Declaration No. 01-30651 in the name of Jose Garcia. Is this the tax declaration evidencing your ownership and possession of your house?

A

Yes, that is the one.

Q

How are you related to Jose Garcia?

A

My husband.

Q

Where is he now?

A

He is already dead.

ATTY. RIVERAL:

We request Your Honor that the machine copy of the tax declaration be marked as our Exhibit “1”.

COURT:

Mark it.

ATTY. RIVERAL:

Q

The house which you mentioned belongs to you, how many storeys are there?

A

Two storeys.

ATTY. RIVERAL:

Q

You mean the ground floor and the upper portion?

A

Yes, sir.

Q

Where do you usually take your rest in the evening?

A

In the upper portion.

Q

Do you know accused Eden del Castillo?

A

Yes, she is one of my grandchildren.

Q

Where is she living?

A

San Vicente Village, Wireless, Mandaue City.

Q

Is accused Eden del Castillo still single?

A

She is still single.

Q

With whom is she living with before the arrest?

A

Together with her auntie Edna Aballe.

Q

How about her parents?

A

Sometime(s) when they traveled at Badian only Eden is in the house together with her auntie but they stayed in their house.

Q

On July 31, 2000 in that evening who was sleeping at the upper portion of your house?

A

Myself and my grandson.

Q

You are mentioning of Jaime, who is this Jaime?

FISCAL LABORTE:

The witness was only asked who slept at the upper portion and she answered myself and my grandson.

ATTY. RIVERAL:

Q

You mentioned one Jaime Garcia, why was he there?

A

This Jaime was able to sleep in the house at that time considering that his wife was abroad.

...

ATTY. RIVERAL:

Q

That Jaime Garcia you said where did he take his rest that night?

A

At our house.

Q

In what portion thereof?

A

At the upper portion. [32]

The evidence of the prosecution failed to establish by competent evidence that appellant is the owner or at least shared the ownership of the house where the shabu was found. PO3 Petallar testified that based on their own casing operation, appellant frequented the subject house to eat meals;[33] that they were not sure that the house was owned by appellant but only believed that she had belongings therein since she frequented the same.[34] PO2 Borinaga testified it was a public knowledge that appellant was living in the subject house since she was a child.[35] Thus, there is no competent evidence that appellant had control and dominion over the place where the shabu was found. The claim of appellant that she has her residence in San Vicente Village, Wireless, Mandaue City and that she was only a visitor in the house that belongs to her grandmother at the time of the search was not rebutted by convincing evidence.

While it is not necessary that the property to be searched or seized should be owned by the person against whom the search warrant is issued, however, there must be sufficient showing that the property is under appellant's control or possession.[36]

The prosecution likewise failed to prove appellant's possession of the shabu at the time of her arrest. It bears stressing that at the time the raiding team conducted the search, appellant and the other occupants were asked to stay in the living room. PO3 Petallar did not find any drugs on appellant's body nor was there anything unusual or suspicious noted in her person.[37]

Notably, the policemen testified that they found the shabu in the upper portion of the house, however, it was not shown at all in whose room it was found. In fact, the defense evidence showed that at the time the two policemen

went upstairs, Jaime Garcia, appellant's uncle, was asleep and was awakened by the policemen who asked him to go down. This was corroborated by PO2 Borinaga who testified on cross-examination that while he was downstairs, there was a person upstairs who came down.[38] Moreover, it was appellant's grandmother and the latter's grandson, Brent, who were staying in the upper portion of the house. Also, the shabu found at the ground floor of the house does not conclusively establish that it belongs to appellant since it was not found together with the other things of appellant. To reiterate, she was not the only person who had access to the entire house. In fact, it was also shown by the prosecution that a certain Servando, appellant's brother, voluntarily surrendered five small plastic packs of white crystalline substance. We find that the prosecution failed to prove convincingly that the seized shabu belonged to appellant.

Moreover, the manner in which the search was conducted on the subject house failed to comply with the mandatory provisions of Section 8 (formerly Section 7), Rule 126 of the Rules of Court, which provides:

SEC. 8. Search of house, room, or premises, to be made in presence of two witnesses – No search of a house, room, or any other premise shall be made except in the presence of the lawful occupant thereof or any member of his family or in the absence of the latter, two witnesses of sufficient age and discretion residing in the same locality.

Clearly, the search of the house must be done in the presence of the lawful occupants and it is only in the absence of the former that two witnesses of sufficient age and discretion residing in the same locality may be called upon to witness the search. While appellant and the other occupants of the house were present during the search, they were not allowed to actually witness the search of the premises. They were in the words of the policemen "pressed," i.e., they were asked to stay put in the sala where they were seated while the simultaneous search was on-going in the upper and lower portions of the house.[39] They should be the ones that should have accompanied the policemen while the search was being done and not substituted by the barangay tanods in their stead. We held in *People vs. Go*: [40]

As pointed out earlier, the members of the raiding team categorically admitted that the search of the upper floor, which allegedly resulted in the recovery of the plastic bag containing the shabu, did not take place in the presence of either the lawful occupant of the premises, i.e. appellant (who was out), or his son Jack Go (who was handcuffed to a chair on the ground floor). Such a procedure, whereby the witnesses prescribed by law are prevented from actually observing and monitoring the search of the premises, violates both the spirit and the letter of the law:

Furthermore, the claim of the accused-appellant that the marijuana was planted is strengthened by the manner in which the search was conducted by the police authorities. The accused-appellant was seated at the sala together with Sgt. Yte when they heard someone in the kitchen uttered "ito na". Apparently, the search of the accused-appellant's house was conducted in violation of Section 7, Rule 126 of the Rules of Court which specifically provides that no search of a house, room or any other premise shall be made except in the presence of the lawful occupant thereof or any member of his family or in the absence of the latter, in the presence of two (2) witnesses of sufficient age and discretion residing in the same locality. This requirement is mandatory to ensure regularity in the execution of the search warrant. Violation of said rule is in fact punishable under Article 130 of the Revised Penal Code.

As we have ruled in *Eduardo Quintero vs. The National Bureau of Investigation, et al.*, a procedure, wherein members of a raiding party can roam around the raided premises unaccompanied by any witness, as the only witnesses available as prescribed by law are made to witness a search conducted by the other members of the raiding party in another part of the house, is violative of both the spirit and letter of the law.

That the raiding party summoned two barangay kagawads to witness the search at the second floor is of no moment. The Rules of Court clearly and explicitly establishes a hierarchy among the witnesses in whose

presence the search of the premises must be conducted. Thus, Section 8, Rule 126 provides that the search should be witnessed by “two witnesses of sufficient age and discretion residing in the same locality” only in the absence of either of the lawful occupant of the premises or any member of his family. Thus, the search of appellant’s residence clearly should have been witnessed by his son Jack Go who was present at the time. The police officers were without discretion to substitute their choice of witnesses for those prescribed by the law.

...

The search conducted by the police officers of appellant’s residence is essentially no different from that in *People v. Del Rosario* where this Court observed:

We thus entertain serious doubts that the shabu contained in a small canister was actually seized or confiscated at the residence of the accused-appellant. In consequence, the manner the police officers conducted the subsequent and much delayed search is highly irregular. Upon barging into the residence of the accused-appellant, the police officers found him lying down and they immediately arrested and detained him in the living room while they searched the other parts of the house. Although they fetched two persons to witness the search, the witnesses were called in only after the policeman had already entered accused-appellant’s residence (PP. 22-23, *tsn*, December 11, 1991), and therefore, the policemen had more ample time to plant the shabu. Corollary to the Constitutional precept that, in all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved (Section 14[2], Article III, Constitution of the Republic of the Philippines) is the rule that in order to convict an accused the circumstances of the case must exclude all and each and every hypothesis consistent with his innocence (*People vs. Tanchoco*, 76 Phil 463 [1946]; *People vs. Constante*, 12 SCRA 653[1964]; *People vs. Jara*, 144 SCRA 516[1986]). The facts of the case do not rule out the hypothesis that accused-appellant is innocent.

We also find that the raiding team failed to comply with the procedures on search and seizures provided under Sections 11 and 12, Rule 126 of the Rules on Criminal Procedure, to wit:

SEC. 11. Receipt for the property seized. – The officer seizing the property under the warrant must give a detailed receipt for the same to the lawful occupant of the premises in whose presence the search and seizure were made, or in the absence of such occupant, must, in the presence of at least two witnesses of sufficient age and discretion residing in the same locality, leave a receipt in the place in which he found the seized property.

SEC. 12. Delivery of property and inventory thereof to the court. – The officer must forthwith deliver the property seized to the judge who issued the warrant, together with a true inventory thereof duly verified under oath.

Clearly, the detailed receipt of the inventory must be given to the lawful occupant. In this case, however, PO3 Petallar admitted that the inventory receipt was given to the barangay tanod[41] despite the presence of the appellant and her grandmother which is a violation of the rule.

Likewise, the police officers failed to deliver the seized items to the court which issued the search warrant. It was commanded in the search warrant that the seized articles be brought to the court which issued it to be dealt with as the law directs. Under the rule, the seized property must be delivered by the officer to the judge who issued the warrant. It must be accompanied with a true inventory thereof duly verified. The police officers all testified that the confiscated shabu was brought to the PNP Crime Laboratory for examination. Faced with the same circumstance, we held in *People vs. Gesmundo*:[42]

On the issue of non-delivery of the seized marijuana to the court, the trial court held that it takes judicial notice of the usual practice of the San Pablo City police force of retaining possession of confiscated specimens suspected of being marijuana by immediately forwarding them to the NBI or to an NBI accredited physician for preliminary examination and/or laboratory examination before filing a case with the city prosecutor’s

office. The mere tolerance by the trial court of such a practice does not make it right. Clearly, such practice violates the mandatory requirements of the law and defeats the very purpose for which they were enacted. Speculations as to the probability of tampering with the evidence cannot then be avoided.

The trial judge cites the case of *Yee Sue Koy, et al vs. Mariano Almeda , et al.* (70 Phil 141) to justify the retention by the police and the NBI of the custody of the allegedly confiscated specimens. While in said decision, this court recognized the fact that the objects seized were retained by the agents of the Anti-Usury Board, instead of being turned over to the Justice of the Peace of Sagay, yet the Court also held that it was “for the reason that the custody of said agents is the custody of the issuing officer or court, the retention having been approved by the latter.” Thus, approval by the court which issued the search warrant is necessary for the retention of the property seized by the police officers; and only then will their custody be considered custody of the court. Absent such approval, the police officers have no authority to retain possession of the marijuana and more so, to deliver the property to another agency, like the NBI.[43]

Moreover, the inventory receipt was not certified under oath by any of the members of the raiding team as required by the rule but was signed only by appellant and her brother.

The trial court erred in relying on the receipt of confiscated articles to establish that the raiding team had actually seized the listed items therein. First, it is highly irregular that the inventory receipt was dated July 24, 2000 when the actual raid was conducted on July 31, 2000. We find the explanation unacceptable given that the receipt was already prepared earlier than the search. Such discrepancy affects the integrity of the inventory receipt. Second, appellant signed the receipt without the assistance of counsel. It was established that at the time she signed the receipt, she was already under custodial investigation. The testimony of PO3 Petallar is revealing:

Q

When you saw the articles seized you were of the impression that they were illegal?

A

Yes, sir.

Q

Because of that impression you held Eden del Castillo in custody of the law?

A

Yes, sir.

Q

You handcuffed Eden del Castillo immediately?

A

No, we do (sic) not handcuffed (sic) Eden del Castillo.

Q

Although you do (sic) not handcuffed (sic) Eden del Castillo, the accused but virtually she was already held in custody of the law?

A

We effected the arrest.

Q

So you begun listing down the articles which is supposedly seized?

A

Upon the delivery of the seized articles from the searching parties I began listing.

Q

You listed the articles in that prepared form, correct?

A

Yes, sir. [44]

Q

In your joint affidavit, you stated in paragraph 7 “That we informed her Constitutional Right provided under the 1987 Phil. Constitution?”

A

Yes, sir.

Q

You informed her of her right under the Constitution because you wanted her to claim ownership of the seized articles?

A

We just informed her about her constitutional right.

Q

So that after informing her of her constitutional right she signed this receipt or inventory of seized articles, correct?

A

Yes, sir.

Q

So you asked her by interrogation or question whether or not you will concur to the entries listed in this inventory?

A

Yes, sir.

Q

You also asked her that the search was conducted in a very orderly manner?

A

Yes, sir.

Q

You also asked her that nothing was destroyed or lost inside the house?

A

Yes, sir.

Q

That you also asked her that the members of the raiding team did not in any manner subjected (sic) them to unreasonable treatment?

A

Yes, sir.

Q

And that they were not exposed to embarrassment?

A

Yes, sir.

Q

Since you shoot (sic) several questions and informing her of the constitution(al) right(s) under the 1987 Constitution did you tell her that you have the right to be assisted by counsel?

A

I told her that.

...

COURT:

Q

After you had told the accused that she is entitled to have counsel now what did the accused say, if any?

A

She told me that she would get a lawyer.

ATTY. RIVERAL:

Q

In effect, did she get a lawyer?

A

Not immediately.

...

Q

Thereafter was she able to get a lawyer?

A

When we arrived at the camp her sister told us that she had already hired a lawyer.

Q

In effect, did that lawyer appear in the camp?

A

I never saw.

Q

So accused would (sic) sign (sic) that instrument without the assistance of counsel?

A

Yes, sir.[45]

While PO3 Petallar testified that appellant was read her constitutional right, it was not clearly shown that she was informed of her right not to sign the receipt and that it can be used as an evidence against her. If appellant was indeed informed of her constitutional right, it is unusual for her to sign the receipt acknowledging ownership of the seized items without the assistance of counsel considering that she wanted to get a lawyer. In *People vs. Go*,^[46] we found the inventory receipt signed by appellant inadmissible for being violative of her custodial right to remain silent, thus:

After the inventory had been prepared, PO2 Abulencia presented it to appellant for his signature without any showing that appellant was informed of his right not to sign such receipt and to the assistance of counsel. Neither was he warned that the same could be used as evidence against him. Faced with similar circumstances, this Court in *People v. Gesmundo* stated:

It is true that the police were able to get an admission from the accused-appellant that marijuana was found in her possession but said admission embodied in a document entitled “PAGPAPATUNAY” previously prepared by the police, is inadmissible in evidence against the accused-appellant for having been obtained in violation of her rights as a person under custodial investigation for the commission of an offense. The records show that the accused-appellant was not informed of her right not to sign the document; neither was she informed of her right to the assistance of counsel and the fact that the document may be used as evidence against her.

In *People vs. Policarpio*, this Court held that such practice of inducing suspects to sign receipts for property allegedly confiscated from their possession is unusual and violative of the constitutional right to remain silent, viz:

What the records show is that appellant was informed of his constitutional right to be silent and that he may

refuse to give a statement which may be used against him, that is why he refused to give a written statement unless it is made in the presence of his lawyer as shown by the paper he signed to this effect. However, he was made to acknowledge that the six (6) small plastic bags of dried marijuana leaves were confiscated from him by signing a receipt and to sign a receipt for the P20.00 bill as purchase price of the dried marijuana leaves he sold to Pat. Mangila.

Obviously the appellant was the victim of a clever ruse to make him sign these alleged receipts which in effect are extra-judicial confessions of the commission of the offense. Indeed it is unusual for appellant to be made to sign receipts for what were taken from him. It is the police officers who confiscated the same who should have signed such receipts. No doubt this is a violation of the constitutional right of the appellant to remain silent whereby he was made to admit the commission of the offense without informing him of his right. Such a confession obtained in violation of the Constitution is inadmissible in evidence.

The Inventory Receipt signed by appellant is thus not only inadmissible for being violative of appellant's custodial right to remain silent; it is also an indicium of the irregularity in the manner by which the raiding team conducted the search of appellant's residence.

Assuming *arguendo* that appellant did waive her right to counsel, such waiver must be voluntary, knowing and intelligent. To insure that a waiver is voluntary and intelligent, the Constitution^[47] requires that for the right to counsel to be waived, the waiver must be in writing and in the presence of the counsel of the accused.^[48] There is no such written waiver in this case, much less was any waiver made in the presence of the counsel since there was no counsel at the time appellant signed the receipt. Clearly, appellant affixed her signature in the inventory receipt without the assistance of counsel which is a violation of her right under the Constitution.

In all criminal cases, it is appellant's constitutional right to be presumed innocent until the contrary is proved beyond reasonable doubt. Thus in *People vs. Del Norte*,^[49] we said:

We detest drug addiction in our society. However, we have the duty to protect appellant where the evidence presented shows "insufficient factual nexus" of her participation in the commission of the offense charged. In *People vs. Laxa*, we held:

The government's drive against illegal drugs deserves everybody's support. But it cannot be pursued by ignoble means which are violative of constitutional rights. It is precisely when the government's purposes are beneficent that we should be most on our guard to protect these rights. As Justice Brandeis warned long ago, "the greatest dangers to liberty lurk in the insidious encroachment by men of zeal, well meaning without understanding."

WHEREFORE, the decision appealed from is REVERSED and SET ASIDE on the ground that the prosecution failed to establish the guilt of appellant Eden del Castillo. She is hereby ACQUITTED of the crime charged against her and her immediate release from confinement is hereby ordered unless she is lawfully held in custody for another cause.

The Director of the Bureau of Corrections is ordered to forthwith implement this decision and to inform this Court, within ten (10) days from receipt hereof, of the date appellant was actually released from confinement.

The shabu and other shabu paraphernalias seized during the search are forfeited in favor of the State.

SO ORDERED.

Puno, (Chairman), Callejo, Sr., and Tinga, JJ., concur.
Chico-Nazario, J., on leave.

- [1] Penned by Judge Galicano C. Arriesgado
- [2] Original Records, p.1; Rollo, pp. 7-8.
- [3] Original Records, p. 16.
- [4] Original Record, p. 8 Defense Exhibit “2.”
- [5] TSN, September 12, 2000, p. 5 (Bauzon); TSN, October 12, 2000, p. 4 (Petallar); and, TSN, January 4, 2001, p. 3 (Borinaga).
- [6] TSN, September 21, 2000, p. 4 (Bauzon); TSN, October 12, 2000, p. 5 (Petallar); and, TSN, January 4, 2001, p. 3 (Borinaga).
- [7] TSN, September 21, 2000, p. 12 (Bauzon); TSN, October 12, 2000, p. 12 (Petallar); and, TSN, January 4, 2001, p. 9 (Borinaga).
- [8] TSN, September 21, 2000, p. 4 (Bauzon); TSN, October 12, 2000, pp. 6-7 (Petallar); and, TSN, January 4, 2001, p. 5 (Borinaga).
- [9] TSN, September 21, 2000, p. 5 (Bauzon); and, TSN, January 4, 2001, p. 6 (Borinaga).
- [10] TSN, September 21, 2000, p. 7 (Bauzon); TSN, October 12, 2000, p. 7 (Petallar); and, TSN, January 4, 2001, p. 6 (Borinaga).
- [11] TSN, October 12, 2000, pp. 7-10 (Petallar); and, TSN, January 4, 2001, pp. 13-14 (Borinaga).
- [12] TSN, September 21, 2000, pp. 5-6 (Bauzon); TSN, October 12, 2000, p. 14 (Petallar); and, TSN, January 9, 2001, pp. 6-7 (Borinaga).
- [13] TSN, September 21, 2000, p.18 (Bauzon); and, TSN, October 12, 2000, p. 8 (Petallar).
- [14] TSN, October 12, 2000, p. 9 (Petallar).
- [15] TSN, September 21, 2000, p. 8 (Bauzon); TSN, October 12, 2000, p. 9 (Petallar); and, TSN, January 9, 2001, p. 7 (Borinaga).
- [16] TSN, December 5, 2000, pp. 4-7.
- [17] TSN, February 1, 2001, p. 4.
- [18] Id. at p. 5.
- [19] Id. at p. 6.
- [20] TSN, February 1, 2001, p. 4 (Elena); TSN, February 27, 2001, p. 4 (Jaime); and, TSN, March 13, 2001, p. 6 (appellant).
- [21] TSN, February 1, 2001, p. 7 (Elena); TSN, February 27, 2001, p. 5 (Jaime); and, TSN, March 13, 2001, p. 6 (appellant).
- [22] TSN, February 1, 2001, p. 8 (Elena); TSN, February 27, 2001, p. 6 (Jaime); and, TSN, March 13, 2001, p. 7 (appellant).
- [23] TSN, March 13, 2001, p. 7.
- [24] Id. at p. 8.

[25] Ibid.

[26] Id. at p. 9.

[27] Original Records, pp. 102-109.

[28] Id. at p. 109.

[29] Id. at pp.108-109.

[30] Rollo, pp. 53-54.

[31] G.R. No. 139615, May 28, 2004.

[32] TSN, Feb.1, 2001, pp. 4-5.

[33] TSN, October 12, 2000, p.10.

[34] Id. at p. 11.

[35] TSN, January 4, 2001, p. 14.

[36] People vs. Dichoso, 223 SCRA 174, 191 (1993), citing Burgos vs. Chief of Staff, 133 SCRA 800 (1984).

[37] TSN, October 12, 2000, p. 13.

[38] TSN, January 4, 2001, pp. 10-11.

[39] TSN, September 21, 2000, p. 12 (Bauzon); TSN, October 12, 2000, p. 12 (Petallar); and, TSN, January 4, 2001, p. 9 (Borinaga).

[40] G.R. No. 144639, September 12, 2003.

[41] TSN, October 12, 2000, p. 9.

[42] 219 SCRA 743 (1993).

[43] Id. at pp. 753-754.

[44] TSN, November 9, 2000, pp. 3-4.

[45] Id. at pp. 7-9.

[46] See note 40.

[47] People vs. Ramos, 186 SCRA 184, 191 (1990).

[48] Art. III, Section 12(1).

[49] G.R. No. 149462, March 29, 2004.

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