

THE PEOPLE OF THE PHILIPPINES, APPELLEE, VS. JESUS NUEVAS Y GARCIA, REYNALDO DIN Y GONZAGA, AND FERNANDO INOCENCIO Y ABADEOS, APPELLANTS.

G.R. NO. 170233. February 22, 2007

Ponente: TINGA, J.

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TINGA, J.:

Jesus Nuevas y Garcia (Nuevas) was charged[1] before the Regional Trial Court (RTC) of Olongapo City, Branch 75, with illegal possession of marijuana in violation of Section 8, Article II of Republic Act No. 6425[2] as amended.

Reynaldo Din y Gonzaga (Din) and Fernando Inocencio y Abadeos (Inocencio) were likewise charged[3] with the same crime, before the same court.

Upon arraignment, Nuevas, Din and Inocencio pleaded not guilty to the charges.[4] As the evidence in the cases was common and the prosecution would utilize the same witnesses, the cases were consolidated. After a joint trial on the merits, the RTC rendered a Decision[5] dated 4 April 2002, disposing as follows:

WHEREFORE, finding all accused in the above-entitled cases guilty beyond reasonable doubt, this Court hereby sentences them to suffer the penalty of Reclusion Perpetua and each to pay [a] fine of P500,000.00 without subsidiary imprisonment in case of insolvency and to pay the costs.

The bricks of marijuana are hereby confiscated and disposed in accordance with existing regulations.

SO ORDERED.[6]

To put in appropriate context the operative facts on which adjudication of this case hinges, there is need to recall the factual assertions of the witnesses for both the prosecution and the defense.

PO3 Teofilo B. Fami (Fami) testified that in the morning of 27 September 1997, he and SPO3 Cesar B. Cabling (Cabling) conducted a stationary surveillance and monitoring of illegal drug trafficking along Perimeter Street, Barangay Pag-asa, Olongapo City. They had received information that a certain male person, more or less 5'4" in height, 25 to 30 years old, with a tattoo mark on the upper right hand, and usually wearing a sando and maong pants, would make a delivery of marijuana dried leaves. While stationed thereat, they saw a male person who fit the description, carrying a plastic bag, later identified as Jesus Nuevas (Nuevas), alight from a motor vehicle. They accosted Nuevas and informed him that they are police officers. Fami asked Nuevas where he was going. Nuevas answered arrogantly but afterwards, calmed down. Nuevas and Fami conversed in the Waray dialect. Nuevas informed him that there were other stuff in the possession of a certain Vangie, an associate, and two other male persons. Later on, Nuevas voluntarily pointed to the police officers a plastic bag which, when opened, contained marijuana dried leaves and bricks wrapped in a blue cloth. Shortly, in his bid to escape charges, Nuevas disclosed where the two (2) other male persons would make the delivery of marijuana weighing more or less five (5) kilos.[7]

Fami and Cabling, together with Nuevas, then proceeded to Purok 12, Old Cabalan, Olongapo City, which according to Nuevas was where his two (2) companions, Din and Inocencio, could be located. From there, they saw and approached two (2) persons along the National Highway, introducing themselves as police officers. Din was carrying a light blue plastic bag. When asked, Din disclosed that the bag belonged to Nuevas. Fami then took the bag and upon inspection found inside it "marijuana packed in newspaper and wrapped therein." [8] After confiscating the items, Fami and Cabling brought Nuevas, Din and Inocencio to the police office at Purok III for proper documentation. [9] Fami further testified that a receipt for the property seized was issued by Cabling and that a field test was duly conducted on the confiscated items. All three accused were likewise physically examined on the basis of which corresponding medical certificates were issued. The corresponding booking sheets and arrest report were also accomplished. Fami stated that he and Cabling executed a joint affidavit in connection with the arrest of all the accused and the confiscation of the items. [10]

On cross-examination, Fami revealed that when the receipt of evidence seized was prepared, all three (3) accused were not represented by counsel. He likewise disclosed that he was the one who escorted all the accused during their physical examination. He also escorted all three to the Fiscal's office where the latter were informed of the charges against them. [11]

Cabling corroborated Fami's testimony. He, however, testified that after he and Fami had introduced themselves as police officers, Din and Inocencio voluntarily handed to Fami the marijuana dried leaves. [12]

On cross-examination, Cabling testified that the arrest of Nuevas was the result of a tip from Fami's informant, conceding though that the name of Nuevas was not included in the list of persons under surveillance. Fami then relayed the tip to Cabling. [13] Cabling restated that Nuevas had voluntarily submitted the plastic bag he was holding and that after Nuevas had been informed of the violation of law attributed to him, he admitted his willingness to cooperate and point to his other cohorts. [14] When Fami and Cabling proceeded to the identified location of Nuevas's cohorts, they chanced upon Din and Inocencio along the road. Din was holding a bag while Inocencio was looking into its contents. [15] Cabling averred that Din voluntarily handed the plastic bag he was holding to the police officers. [16]

For his defense, Nuevas testified that in the morning of 27 September 1997, he was walking along Perimeter Street, on his way home from the Barangay Hall, when Fami called him. Nuevas approached Fami, who was then in front of his house, and asked why Fami had called him. Fami poked his gun at Nuevas and asked him to go inside the room where Fami handcuffed Nuevas's hands, got Nuevas's wallet, took out P1,500.00 and put it in his (Fami's) wallet. Fami then confronted Nuevas with shabu use but the latter denied the charge. Before leaving the house with Nuevas, Fami brought out a plastic bag and told Nuevas to carry it. Subsequently, they boarded a red owner-type jeep and proceeded to Station B where Nuevas was put in jail. Nuevas further stated that he did not know Din or Inocencio. [17]

Din, on the other hand, stated that at about 10 o'clock in the morning of 27 September 1997, while his 'compare' Inocencio was visiting, two (2) men entered his house looking for a woman. The two (2) introduced themselves as police officers. Then, Din and Inocencio were immediately handcuffed. They were not informed of the reason for their arrest and were told that the reason will be explained to them in court. Next, they were brought to the Cabalan precinct where the investigator asked for their names, and subsequently to Station B where they were ordered to stand up and be photographed with Nuevas, who Din first met in jail. Inside the room where they had their fingerprints taken, he saw marijuana placed on top of the table. [18]

Inocencio testified that he went to his 'compadre' Din's house in the morning of 27 September 1997 to sell his fighting cocks as he needed money to redeem his driver's license. While there, he and Din were arrested by two

persons, one of whom pointed a gun at them while the other searched the house for a lady named Vangie. Afterwards, he and Din were brought to the Cabalan Police Precinct and then to Station B where he first came to know Nuevas. He denied that a plastic bag containing marijuana was recovered from them and claimed that he only saw such evidence on the day he gave his testimony. He also stated that when a photograph was taken of the three of them, he and Din were ordered to point to a "wrapped thing." When the photograph was taken, they were not assisted by counsel. He also does not recall having signed a receipt of property seized. Afterwards, they were brought to a detention cell. And when they asked the police what they did wrong, the police replied that they will just explain it in court. [19]

All three were found guilty as charged and the judgment of conviction was elevated to the Court for automatic review. However, on 14 July 2003, Nuevas filed a manifestation and motion to withdraw appeal.[20] The Court granted Nuevas's withdrawal of appeal and considered the case closed and terminated as to him, in a Resolution[21] dated 25 August 2003.

In a Resolution[22] dated 22 September 2004 of the Court in G.R. Nos. 153641-42,[23] the cases were transferred to the Court of Appeals pursuant to the Court's ruling in *People v. Efren Mateo*. [24]

Before the Court of Appeals, Din and Inocencio (appellants) argued that the trial court erred: (1) in finding them guilty of the crime charged on the basis of the testimonies of the arresting officers; and (2) in not finding that their constitutional rights have been violated.[25]

The Court of Appeals in a Decision[26] dated 27 May 2005, in CA-G.R. CR No. 00341, affirmed the decision of the trial court. The dispositive portion of the decision reads:

WHEREFORE, all the foregoing considered, the instant appeal is DENIED. The Decision of the Regional Trial Court of Olongapo City, Branch 75, in Criminal Case No. 459-97, is AFFIRMED.

SO ORDERED.[27]

The Court of Appeals restated the rule that when the issue involves the credibility of a witness, the trial court's assessment is entitled to great weight, even finality, unless it is shown that it was tainted with arbitrariness or there was an oversight of some fact or circumstance of weight or influence. The appellate court found Fami and Cabling's version of how appellants were apprehended to be categorical and clear. Din, at the time of his apprehension, was seen holding a plastic bag containing marijuana leaves. On the other hand, Inocencio's possession of the marijuana leaves was established by the fact that he was seen in the act of looking into the plastic bag carried by Din.[28]

With respect to appellants' claim that their constitutional rights have been violated, the appellate court stated that the search in the instant case is exempted from the requirement of a judicial warrant as appellants themselves waived their right against unreasonable searches and seizures. According to the appellate court, both Cabling and Fami testified that Din voluntarily surrendered the bag. Appellants never presented evidence to rebut the same. Thus, in the instant case, the exclusionary rule does not apply.[29]

Din and Inocencio are now before the Court submitting for resolution the same matters argued before the Court of Appeals. Through their Manifestation (In Lieu of Supplementary Brief)[30] dated 22 March 2006, appellants stated that all the arguments necessary to support their acquittal have already been discussed in the brief they had submitted before the appellate court; thus, the filing of a supplemental brief would be a mere reiteration of the arguments discussed in said brief.[31] The Office of the Solicitor General manifested that it is no longer filing a supplemental brief.[32]

The conviction or acquittal of appellants rests on the validity of the warrantless searches and seizure made by the

police officers and the admissibility of the evidence obtained by virtue thereof.

In holding that the warrantless searches and seizure are valid, the trial court ruled as follows:

While the confiscation of the bricks of marijuana from the accused Jesus Nuevas was without a search warrant, it was not bereft of a probable cause. The police team received informations [sic] from an asset that on that day, a male person whom he sufficiently described will deliver marijuana at the vicinity of Perimeter and Bonifacio S[t.], Pag-asa, Olongapo City, a known drop point of illegal drugs. They went to the said area upon that information. Their waiting was fruitful because not long afterwards they saw the accused Jesus Nuevas alighting from a tricycle carrying a bag and after confronting him, he voluntarily gave the bag containing bricks of dried marijuana leaves. With respect to the confiscation of 2 ½ kilos of marijuana and the apprehension of accused Reynaldo Din and Fernando Inocencio, it was a result of a continued operation by the team which this time was led by accused Nuevas to get some concession from the team for his own earlier apprehension. As the apprehension of Nuevas was upon a probable cause, in the same vein was the apprehension of Reynaldo Din and Fernando Inocencio and the recovery from them [of] 2 ½ kilos of dried marijuana leaves. The propriety of this conclusion is necessity [sic] because of the impossibility of getting first a warrant in so short a time with such cumbersome requirements before one can be issued. Before getting a warrant, the culprits shall have already gone into hiding. These situations are not distant to the case of *People v. Jean Balingan* (G.R. No. 105834, 13 Feb. 1995) where we learned that expediency and practicality are some of the justification[s] in the warrantless arrest.[33] [Emphasis supplied]

Appellants maintain that there was no basis for their questioning and the subsequent inspection of the plastic bags of Nuevas and Din, as they were not doing anything illegal at the time.[34]

Our Constitution states that a search and seizure must be carried through or with a judicial warrant; otherwise, such search and seizure becomes "unreasonable" and any evidence obtained therefrom is inadmissible for any purpose in any proceeding.[35] The constitutional proscription, however, is not absolute but admits of exceptions, namely:

- Warrantless search incidental to a lawful arrest. (Sec. 12, Rule 126 of the Rules of Court and prevailing jurisprudence);
- Search of evidence in "plain view." The elements are: (a) a prior valid intrusion based on the valid warrantless arrest in which the police are legally present in the pursuit of their official duties; (b) the evidence was inadvertently discovered by the police who have the right to be where they are; (c) the evidence must be immediately apparent; (d) "plain view" justified mere seizure of evidence without further search;
- Search of a moving vehicle. Highly regulated by the government, the vehicle's inherent mobility reduces expectation of privacy especially when its transit in public thoroughfares furnishes a highly reasonable suspicion amounting to probable cause that the occupant committed a criminal activity;
- Consented warrantless search;
- Customs search;
- Stop and Frisk; and
- Exigent and emergency circumstances.[36]

In the instances where a warrant is not necessary to effect a valid search or seizure, or when the latter cannot be performed except without a warrant, what constitutes a reasonable or unreasonable search or seizure is purely a judicial question, determinable from the uniqueness of the circumstances involved, including the purpose of the search or seizure, the presence or absence of probable cause, the manner in which the search and seizure was made, the place or thing searched and the character of the articles procured.[37]

The courts below anchor appellants' conviction on the ground that the searches and seizure conducted in the instant case based on a tip from an informant fall under one of the exceptions as Nuevas, Din and Inocencio all allegedly voluntarily surrendered the plastic bags containing marijuana to the police officers.[38]

We differ.

First, the Court holds that the searches and seizures conducted do not fall under the first exception, warrantless searches incidental to lawful arrests.

A search incidental to a lawful arrest is sanctioned by the Rules of Court.[39] Recent jurisprudence holds that the arrest must precede the search; the process cannot be reversed as in this case where the search preceded the arrest. Nevertheless, a search substantially contemporaneous with an arrest can precede the arrest if the police have probable cause to make the arrest at the outset of the search. [40]

In this case, Nuevas, Din and Inocencio were not committing a crime in the presence of the police officers. Moreover, police officers Fami and Cabling did not have personal knowledge of the facts indicating that the persons to be arrested had committed an offense. The searches conducted on the plastic bag then cannot be said to be merely incidental to a lawful arrest. Reliable information alone is not sufficient to justify a warrantless arrest under Section 5(a), Rule 113. The rule requires, in addition, that the accused perform some overt act that would indicate that he "has committed, is actually committing, or is attempting to commit an offense." [41]

Secondly, neither could the searches be justified under the plain view doctrine.

An object is in plain view if it is plainly exposed to sight. Where the object seized was inside a closed package, the object itself is not in plain view and therefore cannot be seized without a warrant. However, if the package proclaims its contents, whether by its distinctive configuration, its transparency, or if its contents are obvious to an observer, then the contents are in plain view and may be seized. In other words, if the package is such that an experienced observer could infer from its appearance that it contains the prohibited article, then the article is deemed in plain view. It must be immediately apparent to the police that the items that they observe may be evidence of a crime, contraband or otherwise subject to seizure.[42]

Records show that the dried marijuana leaves were inside the plastic bags that Nuevas and Din were carrying and were not readily apparent or transparent to the police officers. In Nuevas's case, the dried marijuana leaves found inside the plastic bag were wrapped inside a blue cloth.[43] In Din's case, the marijuana found upon inspection of the plastic bag was "packed in newspaper and wrapped therein." [44] It cannot be therefore said the items were in plain view which could have justified mere seizure of the articles without further search.[45]

On the other hand, the Court finds that the search conducted in Nuevas's case was made with his consent. In Din's case, there was none.

Indeed, the constitutional immunity against unreasonable searches and seizures is a personal right which may be waived. However, it must be seen that the consent to the search was voluntary in order to validate an otherwise illegal detention and search, i.e., the consent was unequivocal, specific, and intelligently given, uncontaminated by any duress or coercion. The consent to a search is not to be lightly inferred, but must be shown by clear and convincing evidence. The question whether a consent to a search was in fact voluntary is a question of fact to be determined from the totality of all the circumstances. Relevant to this determination are the following characteristics of the person giving consent and the environment in which consent is given: (1) the age of the defendant; (2) whether he was in a public or secluded location; (3) whether he objected to the search or passively looked on; (4) the education and intelligence of the defendant; (5) the presence of coercive police procedures; (6) the defendant's belief that no incriminating evidence will be found; (7) the nature of the police questioning; (8) the

environment in which the questioning took place; and (9) the possibly vulnerable subjective state of the person consenting. It is the State which has the burden of proving, by clear and positive testimony, that the necessary consent was obtained and that it was freely and voluntarily given.[46]

In Nuevas's case, the Court is convinced that he indeed voluntarily surrendered the incriminating bag to the police officers. Fami testified in this wise:

FISCAL BELTRAN:

Q

Now, when you saw this accused carrying this Exhibit "D,"[47] for your part, what did you do?

A

I just talked to him and asked him where he was going and according to him, he acted arrogantly, sir.

Q

This arrogant action of the accused Jesus Nuevas, when you confronted him did he resist?

A

How did he show his elements, [sic] he said, "So what if you are policeman[?]"

Q

And being confronted with that arrogance, what did you do next?

A

Later on he kept calm by saying [sic] in Waray dialect, sir.

x x x x

Q

What, exactly, did he tell you in Waray dialect?

A

"Sir Famir[sic], don't charge me, sir[.] I am planning to go home to Leyte. I was just earning enough money for my fare, sir."

x x x x

Q

So when the accused speak [sic] to you in Waray, what else did you do if you did anything?

A

I pretended that I agree in his [sic] offer but I also asked him where are the other staffs[sic] sir. [48]

x x x x

Q

With respect to the bag that you confiscated from him, what did you do?

A

He voluntarily pointed it to me and I checked it, the bag, for verification, sir.[49]

Cabling likewise testified as follows:

Q When Fami got this from the accused, he opened this thing that he got?

A The subject voluntarily submitted the same, sir.

Q Upon the order of Fami to open it?

A Nobody ordered it, sir.[50]

There is reason to believe that Nuevas indeed willingly submitted the plastic bag with the incriminating contents to the police officers. It can be seen that in his desperate attempt to exculpate himself from any criminal liability, Nuevas cooperated with the police, gave them the plastic bag and even revealed his 'associates,' offering himself as an informant. His actuations were consistent with the lamentable human inclination to find excuses, blame others and save oneself even at the cost of others' lives. Thus, the Court would have affirmed Nuevas's conviction had he not withdrawn his appeal.

However, with respect to the search conducted in the case of Din, the Court finds that no such consent had actually been given. Fami testified as follows:

FISCAL BELTRAN

Q

Now, what did you do when you saw Din with that Exhibit "C," the plastic bag?

A

Din said that "Oo, Sir, that is owned by Nuevas" [sic] and I took the said plastic bag.

Q

When you took this plastic bag from Din....

Was the accused Jesus Nueva [sic] present when Din told you that?

A

Yes, sir. Nuevas alighted also [from] the vehicle with Cabling.

Q

And what was the reaction of Nuevas when Din told you that the bag belongs to him?

A

I did not react, sir.

Q

After getting that plastic bag from Reynaldo Din, what did you do with it?

A

I inspected the bag and I found out that there is still marijuana packed in newspaper and wrapped therein, sir.[51] [Emphasis supplied.]

Cabling, however, gave a different testimony, viz.:

FISCAL BELTRAN

Q

And upon siting [sic] the two subject persons you have just indicated in your earlier testimony, what did you do?

A

We approached them and introduced ourselves as police officers, and pinpointed by Nuevas as the ones who kept suspected prohibited drugs, sir.

Q

After you approached these two people, what happened?

A

These two people, upon introducing ourselves, [sic] voluntarily surrendered to Fami those marijuana dry leaves, sir.[52]

The police officers gave inconsistent, dissimilar testimonies regarding the manner by which they got hold of the bag. This already raises serious doubts on the voluntariness of Din's submission of the plastic bag. Jurisprudence requires that in case of consented searches or waiver of the constitutional guarantee against obtrusive searches, it is fundamental that to constitute a waiver, it must first appear that (1) the right exists; (2) the person involved had knowledge, either actual or constructive, of the existence of such right; and (3) the said person had an actual intention to relinquish the right.[53]

The prosecution failed to clearly show that Din intentionally surrendered his right against unreasonable searches. While it may not be contrary to human nature for one to be jolted into surrendering something incriminating to authorities, Fami's and Cabling's testimonies do not show that Din was in such a state of mind or condition. Fami and Cabling did not testify on Din's composure-whether he felt surprised or frightened at the time-which fact we find necessary to provide basis for the surrender of the bag. There was no mention of any permission made by the police officers to get or search the bag or of any consent given by Din for the officers to search it. It is worthy to note that in cases where the Court upheld the validity of consented search, the police authorities expressly asked, in no uncertain terms, for the consent of the accused to be searched. And the consent of the accused was established by clear and positive proof.

Neither can Din's silence at the time be construed as an implied acquiescence to the warrantless search. In *People*

v. Burgos,[54] the Court aptly ruled:

x x x As the constitutional guaranty is not dependent upon any affirmative act of the citizen, the courts do not place the citizen in the position of either contesting an officer's authority by force, or waiving his constitutional rights; but instead they hold that a peaceful submission to a search or seizure is not a consent or an invitation thereto, but is merely a demonstration of regard for the supremacy of the law.[55]

Without the dried marijuana leaves as evidence, Din's conviction cannot be sustained based on the remaining evidence. The Court has repeatedly declared that the conviction of the accused must rest not on the weakness of the defense but on the strength of the prosecution.[56] As such, Din deserves an acquittal.

In this case, an acquittal is warranted despite the prosecution's insistence that the appellants have effectively waived any defect in their arrest by entering their plea and by their active participation in the trial of the case. Be it stressed that the legality of an arrest affects only the jurisdiction of the court over the person of the accused. In spite of any alleged waiver, the dried marijuana leaves cannot be admitted in evidence against the appellants, Din more specifically, as they were seized during a warrantless search which was not lawful. A waiver of an illegal warrantless arrest does not also mean a waiver of the inadmissibility of evidence seized during an illegal warrantless arrest.[57]

Turning to Inocencio's case, the Court likewise finds that he was wrongly convicted of the crime charged. Inocencio's supposed possession of the dried marijuana leaves was sought to be shown through his act of looking into the plastic bag that Din was carrying.[58] Taking a look at an object, more so in this case peeping into a bag while held by another, is not the same as taking possession thereof. To behold is not to hold. Indeed, the act attributed to Inocencio is insufficient to establish illegal possession of the drugs or even conspiracy to illegally possess the same. The prosecution failed to show by convincing proof that Inocencio knew of the contents of the bag and that he conspired with Din to possess the illegal items. Inocencio was firm and unshakeable in his testimony that he had no part in any delivery of marijuana dried leaves.

Finally, the law enforcers should be reminded of the Court's dated but nevertheless current exhortation:

x x x In the final analysis, we in the administration of justice would have no right to expect ordinary people to be law-abiding if we do not insist on the full protection of their rights. Some lawmen, prosecutors and judges may still tend to gloss over an illegal search and seizure as long as the law enforcers show the alleged evidence of the crime regardless of the methods by which they were obtained. This kind of attitude condones law-breaking in the name of law enforcement. Ironically, it only fosters the more rapid breakdown of our system of justice, and the eventual denigration of society. While this Court appreciates and encourages the efforts of law enforcers to uphold the law and to preserve the peace and security of society, we nevertheless admonish them to act with deliberate care and within the parameters set by the Constitution and the law. Truly, the end never justifies the means.[59]

WHEREFORE, the Decision dated 4 April 2002 of the Regional Trial Court of Olongapo City, Branch 75, in Criminal Case No. 458-97 and No. 459-97 is reversed and modified. Appellants Reynaldo Din y Gonzaga and Fernando Inocencio y Abadeos are hereby ACQUITTED. The Director of the Bureau of Prisons is ordered to cause the immediate release of appellants from confinement, unless they are being held for some other lawful cause, and to report to this Court compliance herewith within five (5) days from receipt hereof.

SO ORDERED.

Quisumbing, (Chairperson), Carpio, Carpio-Morales and Velasco, Jr., JJ., concur.

[1] The Information against Nuevas reads:

CRIMINAL CASE No. 458-97

That on or about the twenty-seventh (27[th]) day of September, [sic] 1997, in the City of Olongapo, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without being lawfully authorized, did then and there wil[l]fully, unlawfully and knowingly have in his person, possession and control[,] marijuana dried leaves/fruited tops approximately weighing ONE AND ONE-HALF KILOS (1.5) which are prohibited drugs.

CONTRARY TO LAW. (Records, p. 2)

[2] Otherwise known as "The Dangerous Drugs Act."

[3] The Information against Din and Inocencio reads:

CRIMINAL CASE No. 459-97

That on or about the twenty-seventh (27[th]) day of September, [sic] 1997, in the City of Olongapo, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and mutually helping one another, without being lawfully authorized, did then and there wil[l]fully, unlawfully and knowingly have in their persons, possession and control[,] marijuana dried leaves/fruited tops approximately weighing TWO AND ONE-HALF KILOS (2.5) which are prohibited drugs.

CONTRARY TO LAW. (Records, p. 28)

[4] Records, pp. 16, 54.

[5] Id. at 219-226; Penned by Honorable Avelino A. Lazo.

[6] Id. at 226.

[7] TSN, 3 February 1998, pp. 3-5; TSN, 21 May 1998, pp. 3-6, 8, 10.

[8] TSN, 21 May 1998, p. 13.

[9] TSN, 21 May 1998, pp. 11-15.

[10] TSN, 23 June 1998, pp. 2-11.

[11] TSN, 23 June 1998, pp. 12-14.

[12] TSN, 5 March 1998, p. 11.

[13] TSN, 2 April 1998, pp. 3-4.

[14] Id. at 6.

[15] Id. at 8.

[16] Id. at 7-8.

[17] TSN, 17 November 1998, pp. 4-8.

[18] TSN, 13 July 1999, pp. 5-14.

[19] TSN, 24 August 1999, pp. 3-15.

[20] CA rollo, pp. 79-80.

[21]Id. at 88.

[22] Id. at 133.

[23] The docket numbers of the cases when first elevated to the Court.

[24] G.R. Nos. 147678-87, 7 July 2004, 433 SCRA 640.

[25] CA rollo, p. 57.

[26] Id. at 135-143; Penned by Associate Justice Elvi John S. Asuncion with the concurrence of Associate Justices Hakim S. Abdulwahid and Aurora Santiago-Lagman.

[27]Id. at 142-143.

[28] Rollo, p. 7.

[29]Id. at 9-10.

[30] Id. at 13-14.

[31] Id. at 13.

[32]Id. at 15-16; Manifestation and Motion dated 28 March 2006.

[33] CA rollo, p. 72.

[34] Id. at 61.

[35] CONST., Art. III, Secs. 2 and 3 (2), which provides:

SEC. 2. The right of the people to be secured in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, 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.

SEC 3. x x x

(2) Any evidence obtained in violation of x x x the preceding section shall be inadmissible for any purpose in any proceeding.

[36] People v. Tudtud, 458 Phil. 752, 771 (2003) citing People v. Bolasa, 378 Phil. 1073, 1078-1079 (1999).

[37]Caballes v. Court of Appeals, 424 Phil. 263, 278 (2002).

[38] Rollo, p. 10; CA rollo, p. 72.

[39]Rule 126, Sec. 13, provides:

SEC. 13. Search incidental to a lawful arrest.-A person lawfully arrested may be searched for dangerous weapons or anything which may have been used or constitute proof in the commission of an offense without a search warrant.

[40]People v. Tudtud, supra note 36.

[41]Id.

[42] People v. Doria, 361 Phil. 595, 634-635 (1999).

[43] TSN, 21 May 1998, p. 8.

[44] Id. at 13.

[45] Caballes v. Court of Appeals, supra note 37 at 285.

Rule 113, Sec. 5(a) likewise states:

SEC. 5. Arrest without warrant; when lawful.- A peace officer or a private person may, without a warrant, arrest a person:

(a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense; x x x x.

[46] Caballes v. Court of Appeals, supra note 37 at 286.

[47] The plastic bag confiscated from Nuevas containing marijuana.

[48] TSN, 21 May 1998, pp. 5-6.

[49] Id. at 8.

[50] TSN, 2 April 1998, p. 6.

[51] TSN, 21 May 1998, pp. 12-13.

[52] TSN, 5 March 1998, p. 11.

[53] Caballes v. Court of Appeals, supra note 37 at 289 citing People v. Figueroa, G.R. No. 134056, 6 July 2000, 335 SCRA 249, 263.

[54] 228 Phil. 1 (1986).

[55] Id. at 17.

[56] People v. Kimura, G.R. No. 130805, 27 April 2004, 428 SCRA 51, 70.

[57] People v. Bacala-an, 445 Phil. 729, 748 (2003).

[58] Rollo, pp. 8-9.

[59] People v. Encinada, 345 Phil. 301, 323 (1997) citing People v. Cuizon, G.R. No. 109287, 18 April 1996, 256 SCRA 325.

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