

NICOMEDES SILVA @ “COMEDES”; MARLON SILVA @ “TAMA” AND ANTONIETA SILVA, PETITIONERS, VS. THE HONORABLE PRESIDING JUDGE, REGIONAL TRIAL COURT OF NEGROS ORIENTAL, BRANCH XXXIII, D...

G.R. No. 81756. October 21, 1991

Ponente: FERNAN, C.J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-81756/>

FERNAN, C.J.:

In this special civil action for certiorari, petitioners seek the nullification of Search Warrant No. 1 issued by respondent Judge as well as the return of the money in the amount of P1,231.00 seized from petitioner Antonieta Silva.

The antecedent facts are as follows:

On June 13, 1986, M/Sgt. Ranulfo Villamor, Jr., as chief of the PC Narcom Detachment in Dumaguete City, Negros Oriental, filed an "Application for Search Warrant" with the Regional Trial Court, Branch XXXIII, Dumaguete City against petitioners Nicomedes Silva and Marlon Silva.[1] This application was accompanied by a "Deposition of Witness" executed by Pfc. Arthur M. Alcoran and Pat. Leon T. Quindo, also dated June 13, 1986.[2]

On the same day, Judge Nickarter A. Ontal, then Presiding Judge of the Regional Trial Court, Branch XXXIII, Dumaguete City, pursuant to the said "Application for Search Warrant" and "Deposition of Witness", issued Search Warrant No. 1, directing the aforesaid police officers to search the room of Marlon Silva in the residence of Nicomedes Silva for violation of Republic Act No. 6425, otherwise known as the Dangerous Drugs Act of 1972, as amended. Pertinent portions of Search Warrant No. 1 read as follows:

"It appearing to the satisfaction of the undersigned after examining oath (sic) MSGT Ranulfo T. Villamor, Jr. and his witnessess (sic) Pfc Arthur M. Alcoran and Pat. Leon T. Quindo that there is probable cause to believe that possession and control of Marijuana dried leaves, cigarettes, joint has been committed or is about to be committed and that there are good and sufficient reasons to believe that marijuana dried leaves, cigarettes, joint has in possession and/or control at Tama's Room (Rgt side 1st Floor) located at Nono-Limbaga Drive, Tanjay, Neg. Or. which is/are:

"X (Subject of the offense stated above (Stolen or embezzled or other proceeds of fruits of the offense;

"X (Used or intended to be used as means of committing an offense.

"You are hereby commanded to make an immediate search at any time of the day (night) of the room of Tama Silva residence of his father Comedes Silva to open (sic) aparadors, lockers, cabinets, cartoons, containers, forthwith seize and take possession of the following property Marijuana dried leaves, cigarettes, joint and bring the said property to the undersigned to be dealt with as the law directs." [3]

In the course of the search, the serving officers also seized money belonging to Antonieta Silva in the amount of

P1,231.40.

On June 16, 1986, Antonieta Silva filed a motion for the return of the said amount on the grounds that the search warrant only authorized the serving officers to seize marijuana dried leaves, cigarettes and joint, and that said officers failed or refused to make a return of the said search warrant in gross violation of section 11, Rule 126 of the Rules of Court.[4]

Acting on said motion, Judge Ontal issued an Order dated July 1, 1986, stating that the court "holds in abeyance the disposition of the said amount of P1,231.40 pending the filing of appropriate charges in connection with the search warrant." [5]

On July 28, 1987, petitioners filed a motion to quash Search Warrant No. 1 on the grounds that (1) it was issued on the sole basis of a mimeographed "Application for Search Warrant" and "Deposition of Witness", which were accomplished by merely filling in the blanks and (2) the judge failed to personally examine the complainant and witnesses by searching questions and answers in violation of Section 3, Rule 126 of the Rules of Court.[6]

On August 11, 1987, respondent trial court, through Judge Eugenio M. Cruz, who, by then, had replaced retired Judge Ontal, issued an Order denying the motion for lack of merit, finding the requisites necessary for the issuance of a valid search warrant duly complied with.[7]

A motion for reconsideration dated September 1, 1987 filed by petitioners was likewise denied by Judge Cruz in an order dated October 19, 1987.

Hence, this special civil action for certiorari.

Petitioners allege that the issuance of Search Warrant No. 1 was tainted with illegality and that respondent Judge should be viewed to have acted without or in excess of jurisdiction, or committed grave abuse of discretion amounting to lack of jurisdiction when he issued the Order dated August 11, 1987, denying their motion to quash Search Warrant No. 1.

We rule for petitioners.

Section 2, Article III (Bill of Rights) of the 1987 Constitution guarantees the right to personal liberty and security of homes against unreasonable searches and seizures. This section provides:

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

The purpose of the constitutional provision against unlawful searches and seizures is to prevent violations of private security in person and property, and unlawful invasion of the sanctity of the home, by officers of the law acting under legislative or judicial sanction, and to give remedy against such usurpations when attempted.[8]

Thus, Sections 3 and 4, Rule 126 of the Rules of Court provide for the requisites for the issuance of a search warrant, to wit:

"SEC. 3. Requisite for issuing search warrant. - A search warrant shall not issue but upon probable cause in connection with one specific offense 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 things to be seized."

"SEC. 4. Examination of complainant; record. - The judge must, before issuing the warrant, personally examine in the form of searching questions and answers, in writing and under oath the complainant and any witnesses he may produce on facts personally known to them and attach to the record their sworn statements together with any affidavits submitted."

Based on the aforecited constitutional and statutory provisions, the judge must, before issuing a search warrant, determine whether there is probable cause by examining the complainant and witnesses through searching questions and answers.

In the case of *Prudente vs. Dayrit*, G.R. No. 82870, December 14, 1989, 180 SCRA 69, 76, this Court defined "probable cause" as follows:

"The 'probable cause' for a valid search warrant, has been defined 'as such facts and circumstances which would lead a reasonably discreet and prudent man to believe that an offense has been committed, and that objects sought in connection with the offense are in the place sought to be searched'. This probable cause must be shown to be within the personal knowledge of the complainant or the witnesses he may produce and not based on mere hearsay."

In the case at bar, we have carefully examined the questioned search warrant as well as the "Application for Search Warrant" and "Deposition of Witness", and found that Judge Ontal failed to comply with the legal requirement that he must examine the applicant and his witnesses in the form of searching questions and answers in order to determine the existence of probable cause. The joint "Deposition of Witness" executed by Pfc. Alcoran and Pat. Quindo, which was submitted together with the "Application for Search Warrant" contained, for the most part, suggestive questions answerable by merely placing "yes" or "no" in the blanks provided thereon. In fact there were only four (4) questions asked, to wit:

"Q - Do you personally know M/Sgt. Ranulfo Villamor, Jr. the applicant for a search warrant?

"A - Yes, sir.

"Q - Do you have personal knowledge that the said premises subject of the offense stated above, and other proceeds of fruit of the offense, used or obtain (sic) or intended to be used as means of committing an offense?

"A - Yes, sir.

"Q - Do you know personally who is/are the person who has/have the property in his/their possession and control?

"A - Yes, sir.

"Q - How did you know all this (sic) things?

"A - Through discreet surveillance."[9]

The above deposition did not only contain leading questions but it was also very broad. The questions propounded to the witnesses were in fact, not probing but were merely routine. The deposition was already mimeographed and all that the witnesses had to do was fill in their answers on the blanks provided.

In the case of *Nolasco vs. Paño*, G.R. No. 69803, October 8, 1985, 139 SCRA 152, 163, this Court held:

"The 'probable cause' required to justify the issuance of a search warrant comprehends such facts and circumstances as will induce a cautious man to rely upon them and act in pursuance thereof. Of the 8 questions asked, the 1st, 2nd and 4th pertain to identity. The 3rd and 5th are leading not searching questions. The 6th, 7th and 8th refer to the description of the personalities to be seized, which is identical to that in the Search Warrant and suffers from the same lack of particularity. The examination conducted was general in nature and merely

repetitious of the deposition of said witness. Mere generalization will not suffice and does not satisfy the requirements of probable cause upon which a warrant may issue."

Likewise, in the *Prudente* case cited earlier, this Court declared the search warrant issued as invalid due to the failure of the judge to examine the witness in the form of searching questions and answers. Pertinent portion of the decision reads:

"Moreover, a perusal of the deposition of P/Lt. Florencio Angeles shows that it was too brief and short. Respondent Judge did not examine him 'in the form of searching questions and answers'. On the contrary, the questions asked were leading as they called for a simple 'yes' or 'no' answer. As held in *Quintero vs. NBI*, 'the questions propounded by respondent Executive Judge to the applicant's witness are not sufficiently searching to establish probable cause. Asking of leading questions to the deponent in an application for search warrant, and conducting of examination in a general manner, would not satisfy the requirements for issuance of a valid search warrant.'"[10]

Thus, in issuing a search warrant, the judge must strictly comply with the constitutional and statutory requirement that he must determine the existence of probable cause by personally examining the applicant and his witnesses in the form of searching questions and answers. His failure to comply with this requirement constitutes grave abuse of discretion. As declared in *Marcelo vs. De Guzman*, G.R. No. L-29077, June 29, 1982, 114 SCRA 657, "the capricious disregard by the judge in not complying with the requirements before issuance of search warrants constitutes abuse of discretion".

The officers implementing the search warrant clearly abused their authority when they seized the money of Antonieta Silva. This is highly irregular considering that Antonieta Silva was not even named as one of the respondents, that the warrant did not indicate the seizure of money but only of marijuana leaves, cigarettes and joints, and that the search warrant was issued for the seizure of personal property (a) subject of the offense and (b) used or intended to be used as means of committing an offense and NOT for personal property stolen or embezzled or other proceeds of fruits of the offense. Thus, the then presiding Judge Ontal likewise abused his discretion when he rejected the motion of petitioner Antonieta Silva seeking the return of her seized money.

WHEREFORE, the petition is granted. Search Warrant No. 1 is hereby declared null and void. Respondent Judge of the Regional Trial Court of Negros Oriental, Branch XXXIII is directed to order the return to petitioner Antonieta Silva of the amount of P1,231.40 which had earlier been seized from her by virtue of the illegal search warrant. This decision is immediately executory. No costs.

SO ORDERED.

Gutierrez, Jr., Feliciano, Bidin, and Davide, Jr., JJ., concur.

[1] Rollo, p. 20.

[2] Rollo, p. 21.

[3] Rollo, p. 22.

[4] Rollo, pp. 23-24.

[5] Rollo, p. 25.

[6] Rollo, pp. 26-27.

[7] Rollo, p. 29.

[8] Alvero v. Dizon, 76 Phil. 637 (1946).

[9] Rollo, p. 21.

[10] Supra at p. 79.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.