



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated February 17, 2021 which reads as follows:

“G.R. No. 249880 (*Andrew Dionisio y Enriquez v. People of the Philippines*). – Before this Court is a Petition for Review on *Certiorari*¹ filed by Andrew Dionisio y Enriquez (Dionisio) assailing the Decision² dated June 13, 2019 and the Resolution³ dated October 3, 2019 of the Court of Appeals (CA) in CA-G.R. CR No. 41758 which upheld the Decision⁴ dated March 6, 2018 of the Regional Trial Court (RTC) of Makati, Branch 64 in R-MKT-17-02180-CR finding him guilty for violation of Section 11, Article II of Republic Act No. (R.A.) 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

Facts of the Case

On July 5, 2017, at around 4:30 p.m., PO1 Jose James Bolquerin (PO1 Bolquerin) of the Philippine National Police (PNP) of Makati City and *Bantay Barangay* Vener O. De Guzman (BB De Guzman) conducted a patrol along Lopez Jaena Street, Barangay Rizal, Makati City. During patrol, PO1 Bolquerin would normally look around if people passing by are familiar faces or not, and casually ask what they do in the area. Since Dionisio was not a familiar face to him and BB De Guzman, PO1 Bolquerin stopped Dionisio as he was coming out from an alley. From a distance of about one to two meters, he saw Dionisio carrying a *balisong*, more or less five inches in length, tucked in the left side of his shorts. PO1

- over – ten (10) pages ...

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¹ *Rollo*, pp. 11-28.

² Penned by Associate Justice Marlene B. Gonzales-Sison, with the concurrence of Associate Justices Victoria Isabel A. Paredes and Ruben Reynaldo G. Roxas; id. at 35-46.

³ Id. at 48-49.

⁴ Penned by Judge Gina M. Bibat-Palamos; id. at 66-69.

Bolquerin took the *balisong* from Dionisio's side and asked him to raise his shirt. When Dionisio lifted his shirt, he saw a plastic pouch tucked in the right side of his shorts. Informing Dionisio of his violation and his Constitutional rights, he handcuffed Dionisio.⁵

Dionisio was brought to Police Community Precinct 10 of the Makati City Police (PCP-10). PO1 Bolquerin had custody of the four small plastic sachets from the place of arrest along Lopez Jaena Street until they reached PCP-10.⁶ At the police station, PO1 Bolquerin marked the four small plastic sachets seized from Dionisio, to wit: "AED-1 7/15/17 -4:30 PM," "AED-2 7/15/17 -4:30 PM," "AED-3 7/15/17 -4:30 PM," and "AED-4 7/15/17 -4:30 PM." The *balisong* was marked "AED-5 7/15/17 -4:30 PM."⁷

PO1 Bolquerin prepared the Inventory Receipt⁸ signed by the following: (1) BB De Guzman; and (2) *Barangay Kagawad* Abner Dreu.⁹ Photographs of the seized items were also taken at PCP-10.¹⁰ After the marking and inventory, PO1 Bolquerin submitted the inventory sheet and the seized items to the Station Drugs Enforcement Unit (SDEU) for investigation.¹¹ The SDEU issued a Final Investigation Report and a Request for Laboratory Examination.¹²

PCI May Andrea Bonifacio (PCI Bonifacio) of the PNP Southern Police District Crime Laboratory received the four small plastic sachets from PO1 Bolquerin.¹³ PCI Bonifacio conducted the quantitative and qualitative examination of the four small plastic sachets. Per Chemistry Report No. D-1307-17,¹⁴ specimen "AED-1," "AED-2," "AED-3," and "AED-4" yielded positive for the presence of methamphetamine hydrochloride or *shabu*.¹⁵

For his defense, Dionisio narrated that on July 5, 2017, while buying snack at Lopez Jaena Street, three men approached him, two were in civilian clothes and the other donned a police uniform. When asked whether he knew about "*Butchoy*," Dionisio replied in the negative. Thereafter, all three held his arm and he was forcibly boarded in a Mitsubishi Lancer. He was brought to PCP-10 and was

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⁵ TSN dated November 28, 2015, pp. 9-15.

⁶ Id. at 15-18.

⁷ Records, p. 16.

⁸ Id. at 15.

⁹ Id.

¹⁰ Id. at 16.

¹¹ TSN dated November 28, 2017, pp. 18-19.

¹² Records, p. 18

¹³ Id. at 17.

¹⁴ Id. at 19.

¹⁵ Id.

informed that a case for possessing illegal drugs will be filed against him. He then saw a small plastic sachet and a knife on top of a table. He was placed in handcuffs and asked to wait for the *Barangay* Captain. Afterwards, he was brought to the Ospital ng Makati and then to the Makati Police Station.¹⁶ He was later indicted for illegal possession of 0.18 gram of *shabu*, in violation of Section 11, Article II of R.A. 9165, under the following Information:

On July 5, 2017, in the City of Makati, the Philippines, accused, not being lawfully authorized to possess or otherwise use any dangerous drug and without the corresponding prescription, did then and there willfully, unlawfully, and feloniously have in his possession, direct custody and control zero point eighteen (0.18) gram methamphetamine hydrochloride, a dangerous drug, in violation of the above cited law.¹⁷

Dionisio pleaded not guilty.¹⁸ Trial on the merits ensued.¹⁹

Ruling of the Regional Trial Court

In a Decision²⁰ dated March 6, 2018, the RTC found Dionisio guilty of illegal possession of *shabu*. The RTC ruled that the warrantless arrest of Dionisio was valid since he was arrested by PO1 Bolquerin *in flagrante delicto* carrying a *balisong* in violation of Batas Pambansa Bilang 6,²¹ PO1 Bolquerin had reason to conduct a body search on Dionisio which yielded four small plastic sachets of *shabu*. The RTC further ruled that the prosecution successfully established the elements of illegal possession of dangerous drugs. The integrity and evidentiary value of the seized items were also preserved. The items seized were marked and inventoried in the presence of the accused. Then, the items seized were delivered to the crime laboratory and received by PCI Bonifacio. Dionisio was sentenced to an indeterminate penalty of twelve years and one day to fourteen years of imprisonment, and to pay a fine of ₱400,000.00 without subsidiary imprisonment in case of insolvency.²²

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¹⁶ *Rollo*, pp. 37-38.

¹⁷ *Records*, p. 1.

¹⁸ *Id.* at 35.

¹⁹ *Rollo*, p. 36.

²⁰ *Supra* note 4.

²¹ *Illegal Possession of Bladed Weapon*.

²² *Rollo*, pp. 68-69.

Ruling of the Court of Appeals

On appeal, the CA affirmed the Decision of the RTC. The CA similarly found that Dionisio was arrested *in flagrante delicto* for illegal possession of *balisong*. Since Dionisio's arrest was legal, the ensuing search and seizure was lawful. The CA also found that the chain of custody rule was followed and that PO1 Bolquerin was presumed to be regularly performing his official duty. The prosecution also proved that the integrity and evidentiary value of the seized items were properly preserved. The marking and the handling of the specimens were testified to by PO1 Bolquerin. The CA noted that Dionisio admitted the expertise of PCI Bonifacio, the chemist who conducted the laboratory tests. Hence, each link in the chain of custody - from the moment the seized items were confiscated up to the time they were offered as evidence in court- were accounted for. Meanwhile, Dionisio failed to substantiate his defense of frame-up.²³

Petitioner's Arguments

Undaunted, Dionisio filed a Petition for Review on *Certiorari*²⁴ before this Court. He insists that his arrest was unlawful as it was impossible for PO1 Bolquerin to immediately notice the *balisong* tucked in his waist from a distance of about one to two meters from him.²⁵ He further argues that the chain of custody rule was not complied with because: (1) the inventory was not witnessed by a representative from the National Prosecution Service or media;²⁶ (2) no testimony as regards the effort exerted to ensure the presence of the said representatives;²⁷ (3) the items were not marked immediately upon seizure and was only done at the police station;²⁸ (4) the person who received the seized items at the SDEU was not identified;²⁹ and (5) the forensic chemist did not testify as to the procedure done to prevent alteration or replacement of the specimen.³⁰

Respondent's Arguments

In its Comment,³¹ the respondent People of the Philippines, represented by the Office of the Solicitor General (OSG), argues that

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²³ Id. at 41-45.

²⁴ *Rollo*, pp. 11-28.

²⁵ Id. at 18.

²⁶ Id. at 21.

²⁷ Id. at 22.

²⁸ Id. at 24.

²⁹ Id. at 25.

³⁰ Id.

³¹ Id. at 109-127.

the issues raised by Dionisio in his petition are questions of fact which the Court is precluded from resolving.³² The OSG said that Dionisio likewise failed to provide any circumstance that will merit the re-evaluation of the RTC and CA findings.³³ The OSG maintains that the prosecution clearly established that Dionisio illegally possessed 0.18 gram of *shabu* when he was frisked after a valid warrantless arrest.³⁴ The chain of custody of the *shabu* seized from Dionisio was also established from seizure until presentation to the court.³⁵ Lastly, the OSG contends that Dionisio's warrantless arrest was due to his possession of a deadly weapon, in violation of B.P. No. 6, *in flagrante delicto* and in the presence of PO1 Bolquerin and BB De Guzman.³⁶

Ruling of the Court

We grant the petition.

Pertinent to the resolution of this case is the determination on whether the warrantless search was incidental to a lawful arrest. The RTC and CA concluded that Dionisio was caught *in flagrante delicto* of possessing a *balisong*, making his warrantless search lawful.³⁷ This Court disagrees.

A search incident to a lawful arrest is authorized by Section 13, Rule 126 of the Rules of Court which provides:

Section 13. *Search Incident to 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.³⁸

There must be a valid search and seizure pursuant to an equally valid arrest, which must precede the search. For this purpose, the law requires that there be first a lawful arrest before a search can be made – the process cannot be reversed.³⁹

The procurement of a warrant is generally required for there to be a lawful arrest. Nevertheless, an arrest may also be effected without a warrant. The pertinent provisions of Rule 113 of the Rules

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³² Id. at 116.

³³ Id. at 116-117.

³⁴ Id. at 118-119.

³⁵ Id. at 122-125.

³⁶ Id. at 120-121.

³⁷ Id. at 41-42, 68.

³⁸ Revised Rules of Criminal Procedure, A.M. No. 00-5-03-SC.

³⁹ *Homar v. People*, 768 Phil. 195, 203 (2015).

on Criminal Procedure provide for the instances when a warrantless arrest may be made:

Section 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;

(b) When an offense has just been committed and he has probable cause to believe based on personal knowledge of facts or circumstances that the person to be arrested has committed it; and

(c) When the person to be arrested is a prisoner who has escaped from a penal establishment or place where he is serving final judgment or is temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another.

x x x x⁴⁰

The first kind of warrantless arrest under Section 5(a)⁴¹ of Rule 113 of the Rules of Court is known as an *in flagrante delicto* arrest. To be valid, two requisites must concur: (1) the person to be arrested must execute an overt act indicating that he has just committed, is actually committing, or is attempting to commit a crime; and (b) such overt act is done in the presence or within the view of the arresting officer. The person effecting the warrantless arrest himself must witness the crime, and therefore, has personal knowledge of the commission of the offense.⁴² Failure to establish these requisites renders an *in flagrante delicto* arrest constitutionally infirm.

Here, the prosecution failed to establish that Dionisio exhibited an overt act within the view of PO1 Bolquerin suggesting that he was in possession of a *balisong*. In the *Pinagsamang Salaysay ng Pag-Aresto*⁴³ executed by PO1 Bolquerin and BB De Guzman, it is stated that they arrested Dionisio under the following circumstances:

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⁴⁰ Revised Rules of Criminal Procedure, A.M. No. 00-5-03-SC.

⁴¹ Section 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[.]

⁴² *Comerciante v. People*, 764 Phil. 627, 635 (2015).

⁴³ Records, p. 81.

Lumabas ang isang lalaki sa eskinita ng Lopez Jaena St nakita ko sa kanyang kaliwang beywang na nakaipit sa kanyang shorts na isang balisong na more [or] less 5 inches ang sukat kung nakasara.

On the other hand, PO1 Bolquerin testified that he ordered Dionisio to raise the shirt he was wearing.⁴⁴ It is therefore impossible for PO1 Bolquerin to see what was tucked in Dionisio's shorts because he is wearing a shirt that covered his trunk and waist. Neither did PO1 Bolquerin state that the *balisong* – more or less five inches in length – was protruding from Dionisio's waist or that the *balisong*, or any part of it, can be seen by him from where he was standing about one or two meters away. Even with a 20/20 vision at broad daylight, PO1 Bolquerin could not have been able to identify with reasonable accuracy that there was a *balisong* tucked in Dionisio's shorts.

The warrantless arrest also cannot be justified under Section 5 (b),⁴⁵ Rule 113 of the Revised Rules of Criminal Procedure. This second instance of a lawful warrantless arrest, known as hot pursuit validly necessitates two stringent requirements before it can be effected: (1) an offense has just been committed; and (2) the person making the arrest has personal knowledge of facts indicating that the person to be arrested has committed it.⁴⁶ Personal knowledge of facts must be based on probable cause, which means an actual belief or reasonable grounds of suspicion. The grounds are reasonable when the suspicion that the person to be arrested is probably guilty of committing the offense based on actual facts, *i.e.*, supported by circumstances sufficiently strong in themselves to create the probable cause of guilt of the person to be arrested.⁴⁷ As discussed above, PO1 Bolquerin, the arresting officer, could have no personal knowledge of any fact or circumstance indicating that Dionisio was in possession of a *balisong* and had just committed a crime. The fact that Dionisio was coming out from an alley is not in itself sufficient to incite suspicion of criminal activity or to create probable cause enough to justify a warrantless arrest.

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⁴⁴ TSN dated November 28, 2017, p. 12

⁴⁵ Section 5. *Arrest without warrant; when lawful.* – A peace officer or a private person may, without a warrant, arrest a person:

x x x x

(b) When an offense has just been committed, and he has probable cause to believe based on personal knowledge of facts or circumstances that the person to be arrested has committed it; x x x

⁴⁶ *Supra* note 42 at 639.

⁴⁷ *Pestilos v. Generoso*, 746 Phil. 301, 317 (2014), citing *United States v. Santos*, 36 Phil. 853, 855 (1917).

Section 5(c),⁴⁸ Rule 113 of the Rules of Court is clearly inapplicable. Dionisio is not a prisoner who has escaped.

It is also important to note that while the defects of Dionisio's arrest are cured by his failure to timely object to the irregularity of his arrest and his active participation in the trial of the case, only the jurisdiction of the court over his person is affected. It is well-settled that a waiver of an illegal warrantless arrest does not carry with it a waiver of the inadmissibility of evidence seized during an illegal warrantless arrest.

Furthermore, the records do not show that Dionisio was charged for violation of Batas Pambansa Bilang 6. While the filing of a criminal charge is not a condition precedent to prove a valid warrantless arrest, this is a piece of evidence that could have supported the conclusion that Dionisio committed a crime and therefore, the subsequent arrest and search on his person was valid.⁴⁹

Accordingly, there was no valid warrantless arrest that preceded the warrantless search on the person of Dionisio. The warrantless search is not incidental to a valid arrest, and, therefore, it is unreasonable.

The necessary and inescapable consequence of the illegality of the search and seizure conducted by PO1 Bolquerin in the instant case is the inadmissibility of the four small plastic sachets of *shabu* seized from Dionisio.

According to Section 3(2),⁵⁰ Article III of the Constitution, any evidence obtained in violation of the right against unreasonable searches and seizures shall be inadmissible for any purpose in any proceeding. Known as the exclusionary rule, evidence obtained and confiscated on the occasion of unreasonable searches and seizures is deemed tainted and should be excluded for being the proverbial fruit of a poisonous tree.⁵¹

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⁴⁸ Section 5. *Arrest without warrant; when lawful.* – A peace officer or a private person may, without a warrant, arrest a person:

x x x x

(c) When the person to be arrested is a prisoner who has escaped from a penal establishment or place where he is serving final judgment or is temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another.

⁴⁹ Supra note 39 at 205.

⁵⁰ Section 3. x x x x.

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

⁵¹ *People v. Sapla*, G.R. No. 244045, June 16, 2020, citing *People v. Comprado*, 829 Phil. 229, 246 (2018).

Therefore, with the inadmissibility of the four plastic sachets of *shabu*, the prosecution is left with no evidence to support the conviction of Dionisio. The inadmissibility of the *corpus delicti* precludes conviction and justifies Dionisio's acquittal.

WHEREFORE, the Petition is **GRANTED**. The Decision dated June 13, 2019 and the Resolution dated October 3, 2019 of the Court of Appeals in CA-G.R. CR No. 41758 are hereby **REVERSED** and **SET ASIDE**. Accordingly, petitioner Andrew Dionisio y Enriquez is **ACQUITTED** and is **ORDERED** to be **IMMEDIATELY RELEASED** from detention, unless he is being lawfully held for another cause.

Let a copy of this Resolution be furnished to the Director General of the Bureau of Corrections, Muntinlupa City, for immediate implementation. The said Director General is **DIRECTED** to report the action taken to this Court, within five (5) days from receipt of this Resolution.

SO ORDERED."

By authority of the Court:

LIBRADA C. BUENA
Division Clerk of Court
1216

by:



MARIA TERESA B. SIBULO
Deputy Division Clerk of Court
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