

THIRD DIVISION

[G.R. No. 224495, February 19, 2020]

**ROMEO TUMABINI, PETITIONER, VS. PEOPLE OF THE
PHILIPPINES, RESPONDENT.**

DECISION

GESMUNDO, J.:

This is an appeal by *certiorari* seeking to reverse and set aside the January 28, 2016 Decision^[1] and the April 7, 2016 Resolution^[2] of the Court of Appeals (CA) in CA-G.R. CR No. 02289. The CA affirmed the October 15, 2012 Joint Judgment^[3] of the Regional Trial Court of Mandaue City, Branch 28 (RTC) in Crim. Case Nos. DU-10273-74 which found Romeo Tumabini (*petitioner*) guilty beyond reasonable doubt of violations of Sections 11 and 12, Article II, of Republic Act (R.A.) No. 9165.

The Antecedents

In two (2) Informations^[4] dated July 3, 2003, petitioner was charged with violations of Sections 11 and 12 of R.A. No. 9165, the accusatory portions of which read:

Criminal Case No. DU-10273
(Illegal Possession of Dangerous Drugs)

That on or about the 19th day of June, 2003 at 5:00 o'clock in the morning, more or less, at Sitio Tuburan, Brgy[.] Jubay, Municipality of Lilo-an, Province of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without authority of law, did then and there willfully, unlawfully and feloniously have in his possession, custody and control three (3) heat-sealed transparent plastic packet[s] of white crystalline substance weighing 0.07 gram, and one (1) heat-sealed transparent plastic packet containing [w]hite crystalline substance weighing 0.01 gram which when subjected to laboratory examination gave positive results for the presence of Methylamphetamine Hydrochloride, a dangerous drug.

CONTRARY TO LAW.^[5]

Criminal Case No. DU-10274
(Illegal Possession of Drug Paraphernalia)

That on [or about] the 19th day of June, 2003, at about 5:00 in the morning [at] Sitio Tuburan, Barangay Jubay, Municipality of Lilo-an, Province of Cebu, Philippines, and within the jurisdiction of this Honorable [C]ourt, the above-named accused, without authority of law[,], did then and there willfully, unlawfully and feloniously have in his possession,

custody and control one (1) roll of tin foil, two (2) pcs. lighters intended to be used in heating, burning and/or sniffing *shabu*.

CONTRARY TO LAW.^[6]

On August 12, 2003, petitioner was released on bail pending trial.^[7] On October 29, 2003, petitioner was arraigned and pleaded not guilty. After pretrial, trial on the merits ensued.

Evidence of the Prosecution

The prosecution presented SPO2 Reynaldo Alcala Matillano (*SPO2 Matillano*) and SPO1 Edwin Tesoro (*SPO1 Tesoro*) as its witnesses. Their testimonies tended to establish the following:

Pursuant to a prior surveillance and test buy, a Search Warrant^[8] dated June 18, 2003, was issued by Judge Ireneo Lee Gako of the Regional Trial Court of Cebu City, Branch 5 (*RTC Cebu City*) against petitioner and his wife, Ivy Tumabini (*Ivy*).

On June 19, 2003, the team led by Police Senior Inspector (*PSI*) Ricardo Flores, SPO2 Matillano, SPO1 Tesoro, and PO3 Jesus Manulat implemented the search warrant. SPO2 Matillano was designated as the searcher; while SPO1 Tesoro was the recorder. According to SPO2 Matillano, they were accompanied by *Barangay* Councilor Silvestre Pepito (*Councilor Pepito*) and *Barangay Tanod* Antonio Ayuda, Jr. (*Tanod Ayuda*). Upon arriving at petitioner's residence, the team called out petitioner but nobody answered. SPO2 Matillano forced open the door of the house but found another locked door leading to the second level where petitioner and his children were staying. Petitioner eventually opened the door and was given a copy of the search warrant. The team informed petitioner that they would search the house in the presence of the *barangay* councilor and *tanod*.^[9]

After searching the house, SPO2 Matillano found three (3) heat-sealed packs and one (1) heat-sealed plastic sachet containing white crystalline substance. The team further found one (1) tin foil, two (2) lighters, a camera, seven (7) watches, a cellphone, five (5) P100.00 bills, two (2) handguns, and three (3) live ammunitions. The three (3) packs weighing 0.07 gram were marked with "RT," the initials of petitioner; while the one (1) sachet weighing 0.01 gram was marked with "IT," the initials of Ivy. SPO1 Tesoro prepared an inventory of the items seized. The seized items were subsequently brought to the PNP Crime Laboratory for examination. Chemistry Report No. D-1010-2003,^[10] dated June 19, 2003, indicated that the specimens yielded a positive result for Methylamphetamine Hydrochloride or *shabu*.^[11]

Evidence of the Defense

The defense presented petitioner as its witness. Petitioner denied the allegations against him. He averred that on the morning of June 19, 2003, he was home together with his family when he heard the sound of people running outside and someone looking for their house. Then, police officers suddenly barged in through their kitchen door. Petitioner asserted that he went to the living room and found armed persons in civilian clothing. He was ordered to sit down and sign a piece of paper at gunpoint, and the police proceeded to search their house while he and his

family remained on the first level. SPO2 Matillano came back with *shabu*, and accused petitioner as its owner.^[12]

The RTC Ruling

In its October 15, 2012 Joint Judgment, the RTC found petitioner guilty of illegal possession of dangerous drugs and sentenced him to suffer imprisonment of twelve (12) years and one (1) day to twenty (20) years, and to pay a fine of Three Hundred Thousand Pesos (P300,000.00). It also found petitioner guilty of illegal possession of drug paraphernalia and sentenced him to suffer imprisonment of six (6) months and one (1) day to four (4) years and to pay a fine of Ten Thousand Pesos (P10,000.00). The RTC held that the search of petitioner's house was validly conducted through a search warrant; and that it was sufficiently proven by the prosecution that petitioner had possession, custody and control of the three (3) packets, one (1) sachet of *shabu*, and several drug paraphernalia.^[13]

Aggrieved, petitioner appealed to the CA.

The CA Ruling

In its January 28, 2016 Decision, the CA affirmed with modification the RTC ruling. It agreed with the RTC that all the elements of the crime of illegal possession of dangerous drugs were duly established because the packets of *shabu* were recovered from petitioner's house when the search warrant was enforced. The CA also stated that the prosecution substantially complied with the law and the integrity of the items seized was preserved because SPO1 Tesoro immediately marked the seized items, prepared an inventory, and the petitioner and witnesses signed the said inventory. It underscored that there was minor inconsistency as to who accompanied the police officers during the implementation of the search warrant. The CA further ruled that petitioner failed to prove any ill motive on the part of the police officers.

However, the CA acquitted petitioner of the crime of illegal possession of drug paraphernalia because the items presented in court were ordinary household items and it was not proven by evidence that said items were actually used in connection with the confiscated drugs.^[14]

Petitioner filed a Motion for Reconsideration but it was denied by the CA in its April 7, 2016 Resolution.^[15]

Hence, this petition raising the following issues:

I.

WHETHER OR NOT THE COURT OF APPEALS GRAVELY ERRED IN AFFIRMING CONVICTION OF SECTION 11, ARTICLE 2 OF [R.A. NO.] 9165 DESPITE THE BLATANT VIOLATION OF BOTH THE CONSTITUTIONAL RIGHT TO PRIVACY AND RIGHT AGAINST UNREASONABLE SEARCH AND SEIZURE OF THE PETITIONER, BECAUSE OF THE UNDUE AND UNNECESSARY [FORCIBLE OPENING] OF HIS HOUSE EMPLOYED BY THE POLICE OFFICERS, DURING [THE UNREASONABLE HOUR ABOUT 5 O'CLOCK IN THE MORNING]; ANY EVIDENCE OBTAINED IS THUS INADMISSIBLE.

II.

WHETHER OR NOT THE COURT OF APPEALS GRAVELY ERRED IN RULING THAT THERE [WAS] SUBSTANTIAL COMPLIANCE WITH THE CHAIN OF CUSTODY MANDATED UNDER SECTION 12 OF R.A. [NO.] 9165, DESPITE THE EXISTENCE OF FLAGRANT LAPSES THEREOF, THEREBY CASTING SERIOUS DOUBT AS TO THE INTEGRITY AND PRESERVATION OF THE ALLEGED ILLEGAL DRUGS SEIZED.^[16]

Petitioner argues that the search conducted in his house was unreasonable because it was implemented at 5:00 a.m. while the residents were still asleep; that the prosecution failed to prove compliance with the chain of custody rule; that the required witnesses under R.A. No. 9165 were not present during the inventory; that no photographs of the seized items were taken; that it was not disclosed as to who delivered the items to the crime laboratory; and that there was no evidence on how the seized items were stored, preserved, labeled, and recorded.

In its Comment,^[17] the People of the Philippines (*respondent*), through the Office of the Solicitor General (*OSG*), counters that the prosecution sufficiently proved all the elements of the crime of illegal possession of dangerous drugs; that it was reasonable for the police to forcibly enter petitioner's house because they were not allowed entry even though they called out petitioner's name; and that it was not shown that the seized drugs were contaminated in any manner.

The Court's Ruling

The petition is impressed with merit.

A search warrant may be served at dawn

One of the arguments of petitioner is that it was unreasonable for the police officers to enforce the search warrant at dawn because it violates his right against unreasonable searches and seizures.

The argument fails.

Section 9, Rule 126 of the Rules of Court states:

Section 9. **Time of making search.** – The warrant must direct that it be served in the day time, unless the affidavit asserts that the property is on the person or in the place ordered to be searched, in which case a direction may be inserted that it be served at any time of the **day or night.**

In *People v. Court of Appeals*,^[18] the Court explained that a search warrant, as an exception, may be enforced at any reasonable hour of the day or night, to wit:

The general rule is that search warrants must be served during the daytime. **However, the rule allows an exception, namely, a search at any reasonable hour of the day or night, when the application asserts that the property is on the person or place ordered to be searched.** In the instant case, the judge issuing the warrant relied on the positive assertion of the applicant and his witnesses that the firearms

and ammunition were kept at private respondent's residence. Evidently, the court issuing the warrant was satisfied that the affidavits of the applicants clearly satisfied the requirements of Section 8, Rule 126 of the Rules of Court. The rule on issuance of a search warrant allows for the exercise of judicial discretion in fixing the time within which the warrant may be served, subject to the statutory requirement fixing the maximum time for the execution of a warrant. We have examined the application for search warrant, and the deposition of the witnesses supporting said application, and find that both satisfactorily comply with the requirements of Section 8, Rule 126. The inescapable conclusion is that the judge who issued the questioned warrant did not abuse his discretion in allowing a search "at any reasonable hour of the day or night." Absent such abuse of discretion, a search conducted at night where so allowed, is not improper.^[19] (emphasis supplied; citations omitted).

In this case, the search warrant stated that the search shall be made at "ANY TIME OF THE DAY OR NIGHT."^[20] Notably, the RTC Cebu City issued the search warrant based on the deposition of PO3 Arturo C. Enriquez and PO3 Jesus Manulat,^[21] which stated that they allegedly bought *shabu* from petitioner at about 9:00 in the evening. Thus, the RTC Cebu City had basis to state that the search warrant may also be implemented at dawn or early morning.

Further, petitioner failed to prove that the entry of police officers in his house was unreasonable. Section 7, Rule 126 of the Rules of Court states:

Section 7. **Right to break door or window to effect search.** – The Officer, if refused admittance to the place of directed search after giving notice of his purpose and authority, may break open any outer or inner door or window of a house or any part of a house or anything therein to execute the warrant or liberate himself or any person lawfully aiding him when unlawfully detained therein.

As testified by SPO2 Matillano, when they went to the house of petitioner, they knocked on the door and called out petitioner's name but nobody answered.^[22] Thus, they bumped the door open on the ground floor to be able to enter petitioner's house. However, the second floor, where petitioner and his children were staying, also had a locked door. At that moment, they tried to convince petitioner to open the door, to which he obliged. Verily, the police officers followed Sec. 7, Rule 126 when they forcibly opened the door of the first floor because they were refused admittance despite giving notice to petitioner.

Chain of Custody Rule

Section 21 of R.A. No. 9165 applies whether the drugs were seized either in a buy-bust operation or pursuant to a search warrant. Chain of custody means the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction. Such record of movements and custody of the seized item shall include the identity and signature of the person who held temporary custody of the seized item, the date and time when such transfer of custody were made in the course of safekeeping and use in court as evidence, and