FIRST DIVISION

[G.R. No. 223140, September 04, 2019]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROSEMARIE GARDON-MENTOY, ACCUSED-APPELLANT.

DECISION

BERSAMIN, C.J.:

A lawful arrest must precede a warrantless search conducted upon the personal effects of an individual. The process cannot be reversed. Hence, the search must rest on probable cause existing independently of the arrest.

The Case

This appeal challenges the decision promulgated on April 28, 2015,[1] whereby the Court of Appeals (CA) affirmed the conviction of the accused appellant for the crime of illegal transportation of dangerous drugs defined and penalized under Section 5 of Republic Act. No. 9165 (C*omprehensive Dangerous Act of 2002*). She had been incriminated following the warrantless search of her personal effects as a passenger of a shuttle van.

Antecedents

The information filed on June 1, 2008 charged the accused-appellant with the violation of Section 5 of R.A. No. 9165, as follows:

> That on or about the 31st day of May 2008, at more or less 4:45 o'clock in the afternoon, at Barangay Malatgao, Municipality of Narra, Province of Palawan, Philippines, and within the jurisdiction of this Honorable Court, the said accused, did then and there willfully, unlawfully and feloniously transport and have in her possession, custody and control of 1,400 grams of Cannavis (sic) Sativa otherwise known as "MARIJUANA", a dangerous drug contained in three (3) packages which are intended to be sold to prospective buyers with whom the accused had actually been engaged in selling, giving away and dispatching said prohibited dugs without the necessary permit and/or license from the proper authorities to possess and sell the same, and where (sic) the said 1,400 grams of marijuana amounting to FORTY THOUSAND PESOS (Php40,000.00), Philippine Currency.
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> CONTRARY TO LAW.[2]

The CA summarized the factual antecedents of the case in this wise:

> On May 30, 2008, an informant relayed to SPO2 Renato Felizarte (SPO2 Felizarte) of the Nan-a Municipal Police Station (police station) in Palawan

that a couple named @ Poks and @ Rose (later identified as accused-appellant), were transporting and selling marijuana in Barangay Malatgao, Narra, Palawan. SPO2 Felizarte relayed the information to Police Senior Inspector Yolanda Socrates (PSI Socrates) who instructed SPO2 Felizarte and PO1 Abdulito Rosales (PO1 Rosales) to conduct surveillance on said suspects. At about 1:43 p.m. of said date, SPO2 Felizarte submitted to the Philippine Drug Enforcement Agency (PDEA) a pre-operation report dated May 30, 2008 with control number PDEA R0-0508-00006, which the PDEA confirmed.

On May 31, 2008, at about 8 a.m., PSI Socrates briefed the operation team (team). At about 4:30 p.m., the informant relayed to the team that accused-appellant will be boarding a Charing 19 shuttle van (van) with plate number VRA 698. Thus, the team proceeded to the National Highway, Barangay Malatgao, Narra, Palawan. At a distance of one (1) to two (2) meters, PO1 Rosales, while on board his motorcycle, saw accused-appellant board the van. PO1 Rosales flagged down the van as it approached them. The team introduced themselves as police officers. They declared that they were conducting a checkpoint because of information about persons transporting illegal drugs. PO1 Rosales told the driver that they will check the van passengers. The driver then opened the van's side door. PO1 Rosales asked the van passengers who among them was Rose. Accused-appellant replied, "*Aka po*" (I am). PO1 Rosales asked accused-appellant where her baggage was. Accused-appellant apprehensively requested the driver to hand her the pink bag placed at the rear portion of the van. SPO2 Felizarte and PO1 Rosales, however, noticed that accused-appellant transferred a block-shaped bundle, wrapped in yellow cellophane and brown tape, from the pink bag to a black one. SPO2 Felizarte and PO1 Rosales suspected this bundle to contain marijuana leaves. Accused-appellant then placed the black bag on a vacant seat beside her. SPO2 Felizarte also noticed that accused-appellant panicked and tried to get down from the van, but he and PO1 Rosales restrained her. Afterwards, PO1 Rosales called Barangay Captain Ernesto Maiguez (Brgy. Captain Maiguez) to proceed to the area.

When Brgy. Captain Maiguez arrived, SPO2 Felizarte and PO1 Rosales asked him if he knew accused-appellant. Brgy. Captain Maiguez said he knew accused-appellant as a rice seller who resided in Barangay Malatgao where he was chairman. The police officers asked Brgy. Captain Maiguez to pick up the black bag, which accused-appellant held beside her. Brgy. Captain Maiguez got (the) said bag and placed it by the road. SPO2 Felizarte requested him to open it. Brgy. Captain Maiguez opened said bag in the presence of accused-appellant and the other van passengers. PO1 Rosales took photographs while said bag was being opened. The black bag contained, *inter alia*: (a) one (1) L-shaped bundle wrapped in yellow cellophane and brown tape; (b) one (1) block-shaped bundle wrapped in newspaper; and (c) one (1) sachet (covered with tissue paper), all suspected to contain marijuana leaves. The police officers smelled the bundles and sachet and confirmed that these contained marijuana leaves. The police officers returned the items inside the black bag. They arrested and informed accused-appellant that she violated Republic Act (R.A.) No. 9165 and apprised the latter of her

constitutional rights. Since accused-appellant lived near the crime scene, the police officers brought her and the seized items immediately to the police station to avoid any untoward incident.

PO1 Rosales carried the black bag from the crime scene to the police station. Thereat, PO1 Rosales prepared an inventory of the seized items in the presence of a media representative and Brgy. Captain Maiguez. PO1 Rosales also marked the L-shaped bundle as "ADR-1", blocked-shaped bundle as "ADR-2", and sachet as "ADR-3", respectively, in the presence of accused-appellant. PO1 Rosales brought the bundles and sachet to the Palawan Crime Laboratory (crime laboratory) where Forensic Chemist and Police Chief Inspector Mary Jane Cordero (PCI Cordero) examined the seized items. She found the contents of the bundles and sachet positive for marijuana and prepared Chemistry Report No. D-005-08 stating her findings.

During trial, PO1 Rosales identified the seized items in open court as the same ones he marked at the police station. He also identified in open court the inventory he prepared at the police station. The defense admitted the documents presented by the prosecution, namely: the Request for Laboratory Examination; PCI Cordero's Chemistry Report No. D-005-08; dried marijuana leaves; L-shaped bundle marked "ADR-1"; dried marijuana leaves; blocked-shaped bundle marked "ADR-2", dried marijuana leaves; and sachet marked "ADR-3". PCI Cordero's testimony was concluded without cross-examination by the defense.

For the defense, accused-appellant testified that on May 11, 2008, at about 4:00 p.m., she was onboard a van bound for Puerto Princesa City for a medical consultation and to canvass the price of rice. Shortly after, a man aboard a motorcycle flagged down the van. Another man, later identified as SPO2 Felizarte, asked the passengers who among them was Rose. After accused-appellant answered that she was Rose, SPO2 Felizarte handcuffed her. The other passengers were told to alight from the van, while accused-appellant remained inside. The police officers searched the baggage of the other passengers and placed these outside the van. The police officers called the passengers to look at a certain bag while they took photographs. Thereafter, accused-appellant was ordered to alight from the van while the other passengers returned inside. The bags of the passengers were returned inside the van, except for one (1) bag, which was held by the police officers. Accused-appellant did not see Brgy. Captain Maiguez open her black bag. The police officers brought her to the police station where she was asked to sign some documents, which she refused to do.[3]

Judgment of the RTC

On June 4, 2013, the RTC convicted the accused-appellant as charged, disposing thusly:

WHEREFORE, in view of the foregoing, the prosecution having satisfactorily proven the guilt of accused **ROSEMARIE GARDON-**

MENTOY, the Court hereby found her **GUILTY** beyond reasonable doubt for the crime of Violation of **Section 5, Article II of R.A. 9165** for transportation of dangerous drug and to suffer the penalty of life imprisonment and a fine of five hundred thousand pesos (P500,000.00).

The confiscated marijuana used in prosecuting this case is hereby ordered to be turned over to the local office of the Philippine Drug Enforcement Agency (PDEA) for proper disposition.

SO ORDERED.[4]

The RTC regarded the warrantless arrest of the accused-appellant as validly made upon probable cause in the context of Section 5(b), Rule 113 of the *Rules of Court*; [5] and concluded that the State had established the *corpus delicti* of the crime by the testimonies of its witnesses.[6]

Decision of the CA

On April 28, 2015, the CA rendered the assailed decision affirming the conviction of the accused-appellant.[7] It opined that a search could precede an arrest if the police officers had probable cause to effect the arrest; that the warrantless search conducted on the personal effects of the accused-appellant had been an incident of her lawful arrest; and that the Prosecution had adequately established the crucial links in the chain of custody.[8] It explained that a search substantially contemporaneous with an arrest could still be said to precede the arrest if the police officers had probable cause to effect the arrest at the outset of the search; and that based on the circumstances showing the existence of probable cause the warrantless search, being an incident to the lawful arrest of the accused-appellant, was valid.[9]

Issue

In this appeal, the accused-appellant insists on the illegality of her warrantless arrest. She asserts that the *marijuana* leaves supposedly taken from her bag were inadmissible in evidence pursuant to the exclusionary rule; and that the apprehending officers did not comply with the procedure laid out in Section 21 of R.A. No. 9165.[10]

The Office of the Solicitor General (OSG) counters that the concurrence of the elements of the crime of illegal possession of dangerous drugs had been proved beyond reasonable doubt; and that the arrest had been legally conducted pursuant to Rule 113, Section 5(b) of the Rules of Court.[11]

Ruling of the Court

The appeal has merit.

I

The right against unreasonable searches and seizures is inviolable

Generally, there can be no valid arrest, search and seizure without a warrant issued by a competent judicial authority. The warrant, to be issued by a judge, must rest upon probable cause - the existence of facts indicating that the person to be arrested has committed a crime, or is about to do so; or the person whose property is to be searched has used the same to commit crime, and its issuance must not be based on speculation, or surmise, or conjecture, or hearsay. The right to be protected from unreasonable searches and seizures is so sacred that no less than Section 2, Article III of the Constitution declares the right to be *inviolable*, and for that reason expressly prohibits the issuance of any search warrant or warrant of arrest except upon probable cause to be personally determined by a 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.

To enforce such inviolable right, Section 3(2), Article III of the Constitutions enunciates the exclusionary rule by unqualifiedly declaring that "[a]ny evidence obtained in violation of this or the preceding section shall be inadmissible for any purpose in any proceeding." The exclusionary rule is intended to deter the violation of the right to be protected from unreasonable searches and arrest.

We are mindful that the guarantee against warrantless arrests, and warrantless searches and seizures admit of some exceptions. One such exception relates to arrests, searches and seizures made at a police checkpoint. Indeed, routine inspections made at checkpoints have been regarded as permissible and valid, if the inspections are limited to the following situations: (a) where the officer merely draws aside the curtain of a vacant vehicle parked on the public fair grounds; (b) simply looks inside a vehicle; (c) flashes a light into the vehicle without opening its doors; (d) where the occupants of the vehicle are not subjected to a physical or body search; (e) where the inspection of the vehicle is limited to a visual search or visual inspection; and (f) where the routine check is conducted in a fixed area.[12]

In short, inspections at checkpoints are confined to visual searches. An extensive search of the vehicle is permissible only when the officer conducting the search had probable cause to believe *prior to the search* that he will find inside the vehicle to be searched the instrumentality or evidence pertaining to the commission of a crime. [13]

II

Warrantless search of the accused-appellant's personal belongings was not based on probable cause

Based on the alleged tip from the unidentified informant to the effect that the accused-appellant would be transporting dangerous drugs on board a Charing 19 shuttle van with plate number VRA 698, the police officers had set up a checkpoint on the National Highway in Barangay Malatgao in Narra, Palawan. There, PO1 Abdulito Rosales later flagged down the approaching shuttle van. The officers at the checkpoint introduced themselves as policemen. But even at that time none of the officers knew who would be transporting dangerous drugs to. They were, only told