

## SECOND DIVISION

[ G.R. No. 201363, March 18, 2013 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
NAZARENO VILLAREAL Y LUALHATI, ACCUSED-APPELLANT.**

### DECISION

**PERLAS-BERNABE, J.:**

This is an appeal from the May 25, 2011 Decision<sup>[1]</sup> of the Court of Appeals (CA) in CA-G.R. CR No. 31320 which affirmed *in toto* the December 11, 2007 Decision<sup>[2]</sup> of the Regional Trial Court of Caloocan City, Branch 123 (RTC), convicting appellant Nazareno Villareal y Lualhati (appellant) of violation of Section 11, Article 11 of Republic Act No. 9165<sup>[3]</sup> (RA 9165) and sentencing him to suffer the penalty of imprisonment for twelve (12) years and one (1) day to fourteen (14) years and eight (8) months and to pay a fine of 300,000.00.

#### The Factual Antecedents

On December 25, 2006 at around 11:30 in the morning, as PO3 Renato de Leon (PO3 de Leon) was driving his motorcycle on his way home along 5<sup>th</sup> Avenue, he saw appellant from a distance of about 8 to 10 meters, holding and scrutinizing in his hand a plastic sachet of *shabu*. Thus, PO3 de Leon, a member of the Station Anti-Illegal Drugs-Special Operation Unit (SAID-SOU) in Caloocan City, alighted from his motorcycle and approached the appellant whom he recognized as someone he had previously arrested for illegal drug possession.<sup>[4]</sup>

Upon seeing PO3 de Leon, appellant tried to escape but was quickly apprehended with the help of a tricycle driver. Despite appellant's attempts to resist arrest, PO3 de Leon was able to board appellant onto his motorcycle and confiscate the plastic sachet of *shabu* in his possession. Thereafter, PO3 de Leon brought appellant to the 9th Avenue Police Station to fix his handcuffs, and then they proceeded to the SAID-SOU office where PO3 de Leon marked the seized plastic sachet with "RZL/NV 12-25-06," representing his and appellant's initials and the date of the arrest.<sup>[5]</sup>

Subsequently, PO3 de Leon turned over the marked evidence as well as the person of appellant to the investigator, PO2 Randolph Hipolito (PO2 Hipolito) who, in turn, executed an acknowledgment receipt<sup>[6]</sup> and prepared a letter request<sup>[7]</sup> for the laboratory examination of the seized substance. PO2 Hipolito personally delivered the request and the confiscated item to the Philippine National Police (PNP) Crime Laboratory, which were received by Police Senior Inspector Albert Arturo (PSI Arturo), the forensic chemist.<sup>[8]</sup>

Upon qualitative examination, the plastic sachet, which contained 0.03 gram of white crystalline substance, tested positive for methamphetamine hydrochloride, a

dangerous drug.<sup>[9]</sup>

Consequently, appellant was charged with violation of Section 11, Article II of RA 9165 for illegal possession of dangerous drugs in an Information<sup>[10]</sup> which reads:

That on or about the 25<sup>th</sup> day of December, 2006 in Caloocan City, Metro Manila and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law, did then and there willfully, unlawfully and feloniously have in his possession, custody and control, METHYLAMPHETAMINE HYDROCHLORIDE (Shabu) weighing 0.03 gram [which,] when subjected [to] chemistry examination gave positive result of METHYLAMPHETAMINE HYDROCHLORIDE, a dangerous drug.

CONTRARY TO LAW.

When arraigned, appellant, assisted by counsel *de officio*, entered a plea of *not guilty* to the offense charged.<sup>[11]</sup>

In his defense, appellant denied PO3 de Leon's allegations and instead claimed that on the date and time of the incident, he was walking alone along Avenida, Rizal headed towards 5<sup>th</sup> Avenue when someone who was riding a motorcycle called him from behind. Appellant approached the person, who turned out to be PO3 de Leon, who then told him not to run, frisked him, and took his wallet which contained P1,000.00.<sup>[12]</sup>

Appellant was brought to the 9<sup>th</sup> Avenue police station where he was detained and mauled by eight other detainees under the orders of PO3 de Leon. Subsequently, he was brought to the Sangandaan Headquarters where two other police officers, whose names he recalled were "Michelle" and "Hipolito," took him to the headquarters' firing range. There, "Michelle" and "Hipolito" forced him to answer questions about a stolen cellphone, firing a gun right beside his ear each time he failed to answer and eventually mauling him when he continued to deny knowledge about the cellphone.<sup>[13]</sup> Thus, appellant sustained head injuries for which he was brought to the Diosdado Macapagal Hospital for proper treatment.<sup>[14]</sup>

The following day, he underwent inquest proceedings before one Fiscal Guiyab, who informed him that he was being charged with resisting arrest and "Section 11."<sup>[15]</sup> The first charge was eventually dismissed.

### **The RTC Ruling**

After trial on the merits, the RTC convicted appellant as charged upon a finding that all the elements of the crime of illegal possession of dangerous drugs have been established, to wit: (1) the appellant is in possession of an item or object which is identified to be a prohibited drug; (2) that such possession is not authorized by law; and (3) that the accused freely and consciously possesses said drug. Finding no ill motive on the part of PO3 de Leon to testify falsely against appellant, coupled with the fact that the former had previously arrested the latter for illegal possession of

drugs under Republic Act No. 6425<sup>[16]</sup> (RA 6425), the RTC gave full faith and credit to PO3 de Leon's testimony. Moreover, the RTC found the plain view doctrine to be applicable, as the confiscated item was in plain view of PO3 de Leon at the place and time of the arrest.

On the other hand, the RTC gave scant consideration to the defenses of denial and frame-up proffered by the appellant, being uncorroborated, and in the light of the positive assertions of PO3 de Leon. It refused to give credence to appellant's claim that PO3 de Leon robbed him of his money, since he failed to bring the incident to the attention of PO3 de Leon's superiors or to institute any action against the latter.

Consequently, the RTC sentenced appellant to suffer the penalty of imprisonment of twelve (12) years and one (1) day to fourteen (14) years and eight (8) months and to pay a fine of P300,000.00.

### **The CA Ruling**

In its assailed Decision, the CA sustained appellant's conviction, finding "a clear case of *in flagrante delicto* warrantless arrest"<sup>[17]</sup> as provided under Section 5, Rule 113 of the Revised Rules of Criminal Procedure. The CA held that appellant "exhibited an overt act or strange conduct that would reasonably arouse suspicion,"<sup>[18]</sup> aggravated by the existence of his past criminal citations and his attempt to flee when PO3 de Leon approached him.

Citing jurisprudence, the appellate court likewise ruled that the prosecution had adequately shown the continuous and unbroken chain of custody of the seized item, from the time it was confiscated from appellant by PO3 de Leon, marked at the police station, turned over to PO2 Hipolito and delivered to the crime laboratory, where it was received by PSI Arturo, the forensic chemist, up to the time it was presented in court for proper identification.

### **The Issue**

The sole issue advanced before the Court for resolution is whether the CA erred in affirming *in toto* the RTC's Decision convicting appellant of the offense charged.

### **The Ruling of the Court**

The appeal is meritorious.

Section 5, Rule 113 of the Revised Rules of Criminal Procedure lays down the basic rules on *lawful* warrantless arrests, either by a peace officer or a private person, as follows:

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;

(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

For the warrantless arrest under paragraph (a) of Section 5 to operate, two elements 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 (2) such overt act is done in the presence or within the view of the arresting officer.<sup>[19]</sup> On the other hand, paragraph (b) of Section 5 requires for its application that at the time of the arrest, an offense had in fact just been committed and the arresting officer had personal knowledge of facts indicating that the appellant had committed it.<sup>[20]</sup>

In both instances, **the officer's personal knowledge of the fact of the commission of an offense is absolutely required.** Under paragraph (a), the *officer himself witnesses* the crime while under paragraph (b), he knows *for a fact* that a crime has just been committed.

In sustaining appellant's conviction in this case, the appellate court ratiocinated that this was a clear case of an "*in flagrante delicto* warrantless arrest" under paragraphs (a) and (b) of Section 5, Rule 113 of the Revised Rules on Criminal Procedure, as above-quoted.

The Court disagrees.

A punctilious assessment of the factual backdrop of this case shows that there could have been no *lawful* warrantless arrest. A portion of PO3 de Leon's testimony on direct examination in court is revelatory:

FISCAL While you were there at 5th Avenue, was there  
LARIEGO: anything unusual that transpired?

PO3 DE Yes Ma'am.

LEON:

Q: What was this incident?

A: While I was on board my motorcycle on my home, I saw a man looking at the shabu in his hand, Ma'am.

Q: And exactly what time was this?

A: Around 11:30 in the morning, Ma'am.

Q: How far were you from this person that you said was verifying something in his hand?

A: Eight to ten meters, Ma'am.

Q: What exactly did you see he was verifying?