

SECOND DIVISION

[G.R. No. 171729, July 28, 2008]

PEOPLE OF THE PHILIPPINES APPELLEE, VS. RICARDO BOHOL Y CABRINO, APPELLANT.

DECISION

QUISUMBING, J.:

On appeal is the Decision^[1] dated September 23, 2005 of the Court of Appeals in CA-G.R. CR-HC No. 01247 affirming the Decision^[2] dated March 7, 2003 of the Regional Trial Court (RTC) of Manila, Branch 35, in Criminal Cases Nos. 02-205461 and 02-205462. The RTC had convicted appellant Ricardo Bohol (Bohol) of violating Sections 11 (3)^[3] and 5,^[4] Article II, respectively, of Republic Act No. 9165^[5] also known as the Comprehensive Dangerous Drugs Act of 2002.

On August 7, 2002, two Informations^[6] were filed against Bohol before the RTC of Manila, Branch 35, for violations of Rep. Act No. 9165.

In Criminal Case No. 02-205461, involving the violation of Section 11 (3), Article II of Rep. Act No. 9165, the information reads as follows:

That on or about August 2, 2002, in the City of Manila, Philippines, the said accused, without being authorized by law to possess any dangerous drug, did then and there willfully, unlawfully and knowingly have in his possession and under his custody and control three (3) heat-sealed transparent plastic sachets containing white crystalline substance commonly known as "shabu" weighing zero point zero four eight (0.048) gram, zero point zero three five (0.035) gram, and zero point zero three five (0.035) gram, respectively, which, after a laboratory examination, gave positive results for methylamphetamine (sic) hydrochloride, a dangerous drug.

CONTRARY TO LAW.^[7]

In Criminal Case No. 02-205462, for violation of Section 5 of the same law, the information reads as follows:

That on or about August 2, 2002, in the City of Manila, Philippines, the said accused, without being authorized by law to sell, administer, deliver, transport or distribute any dangerous drug, did then and there willfully, unlawfully and knowingly sell or attempt to sell, or offer for sale for P100.00 and deliver to PO2 Ferdinand Estrada, a poseur buyer, one (1) heat-sealed transparent plastic sachet containing white crystalline substance commonly known as "shabu" weighing zero point zero five four (0.054) gram, which substance, after a qualitative examination, gave

positive results for methamphetamine hydrochloride, which is a dangerous drug.

CONTRARY TO LAW.^[8]

The antecedent facts in these cases are as follows.

On August 2, 2002, at around 8:30 p.m., a confidential informant came to the police station and tipped P/Sr. Insp. Jessie Nitullano that a certain Ricardo Bohol is engaged in illegal drug trade in Isla Puting Bato, Tondo, Manila. P/Sr. Insp. Nitullano then formed a team of six police operatives to verify the informant's tip, and, if found positive, to launch then and there a buy-bust entrapment of Bohol. PO2 Ferdinand Estrada was assigned to act as poseur buyer, and he was provided with a marked P100-bill as buy-bust money.

Between 9:30 p.m. to 10:00 p.m. of the same day, the team proceeded to the site of their operation. Guided by the informant, PO2 Estrada proceeded to the house of Bohol, whom they saw standing beside the stairs of his house. Following a short introduction, PO2 Estrada and the informant told Bohol of their purpose. Bohol asked, "How much?" to which PO2 Estrada replied, "*Piso lang*" (meaning P100 worth of *shabu*) and handed to the former the marked P100-bill. In turn, Bohol gave PO2 Estrada a plastic sachet containing white crystalline granules which the latter suspected to be *shabu*. The illicit transaction having been consummated, PO2 Estrada gave to his companions their pre-arranged signal. Emerging from their hiding places, PO2 Luisito Gutierrez and his companions arrested Bohol. PO2 Gutierrez frisked Bohol and recovered from him the buy-bust money and three plastic sachets containing similar white crystalline granules suspected to be *shabu*.

Consequently, the police officers brought Bohol to the police station and the confiscated four plastic sachets of white crystalline substance were subjected to laboratory examination. The specimens were confirmed to be methamphetamine hydrochloride, commonly known as *shabu*.

Upon arraignment, Bohol entered a plea of "not guilty" to both charges. Thereafter, trial on the merits ensued.

On March 7, 2003, the trial court rendered the assailed Decision, the dispositive portion of which reads:

WHEREFORE, judgment is rendered:

(1) In Criminal Case No. 02-205461, pronouncing accused RICARDO BOHOL y CABRINO guilty beyond reasonable doubt of possession of a total of 0.118 gram of [methamphetamine] hydrochloride without authority of law, penalized under Section 11 (3) of Republic Act No. 9165, and sentencing the said accused to the indeterminate penalty of imprisonment from twelve (12) years and one (1) day, as minimum, to fifteen (15) years, as maximum, and to pay a fine of P300,000.00, plus the costs.

(2) In Criminal Case No. 02-205462, pronouncing the same accused RICARDO BOHOL y CABRINO guilty beyond reasonable doubt of selling

0.054 gram of [methamphetamine] hydrochloride without authority of law, penalized under Section 5 of the same Republic Act No. 9165, and sentencing the said accused to life imprisonment and to pay a fine of P5,000,000.00, plus the costs.

In the service of his sentence in Criminal Case No. 02-205461, the time during which the accused had been under preventive imprisonment should be credited in his favor provided that he had agreed voluntarily in writing to abide with the same disciplinary rules imposed on convicted prisoner. Otherwise, he should be credited with four-fifths ($\frac{4}{5}$) only of the time he had been under preventive imprisonment.

Exhibits B and B-1, consisting of four sachets of shabu, are ordered forfeited and confiscated in favor of the Government. Within ten (10) days following the promulgation of this judgment, the Branch Clerk of this Court is ordered to turn over, under proper receipt, the drug involved in this case to the Philippine Drug Enforcement Agency (PDEA) for proper disposal.

SO ORDERED.^[9]

Since one of the penalties imposed by the trial court is life imprisonment, the cases were forwarded to this Court for automatic review. On June 15, 2005, this Court transferred the cases to the Court of Appeals for intermediate review pursuant to this Court's decision in *People v. Mateo*.^[10]

In a Decision dated September 23, 2005, the Court of Appeals denied the appeal and affirmed the decision of the trial court with modification, so that the penalty in Criminal Case No. 02-205461 should be imprisonment for 12 years, as minimum, to 14 years, 8 months and 1 day, as maximum. Bohol's Motion for Reconsideration was likewise denied by the appellate court. Thus, Bohol filed a notice of appeal.

By Resolution^[11] dated June 14, 2006, this Court required the parties to file their respective supplemental briefs if they so desire. Bohol and the Office of the Solicitor General (OSG), however, manifested that they are adopting their briefs before the appellate court. Hence, we shall resolve the instant appeal on the basis of the arguments of the parties in said briefs.

In his appellant's brief, Bohol assigns the following errors:

I.

THE TRIAL COURT GRAVELY ERRED IN NOT FINDING THE ACCUSED-APPELLANT'S SEARCH AND ARREST AS ILLEGAL.

II.

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME CHARGED DESPITE THE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.^[12]

Simply stated, the issues are: (1) whether Bohol's arrest and the search on his person were illegal; and (2) whether the trial court erred in convicting Bohol despite the absence of proof beyond reasonable doubt.

On the first issue, Bohol claims that his arrest was illegal since he could not have committed, nor was he about to commit, a crime as he was peacefully sleeping when he was arrested without a warrant. Consequently, the search conducted by the police officers was not incidental to a lawful warrantless arrest, and the confiscated *shabu* obtained from the search was inadmissible as evidence against him.

For the appellee, the OSG maintains that the arrest of Bohol as well as the search on his person is legal. The OSG stresses that the search made on the person of Bohol was incidental to a lawful arrest which was made when he was caught in *flagrante delicto*. Further, the OSG maintains that at the time of Bohol's arrest, the police officers had probable cause to suspect that a crime had been committed since they had received a tip from a confidential informant of the existence of illegal drug trade in the said place.

Bohol's arguments are bereft of merit.

The arrest of Bohol is legal. The Constitution proscribes unreasonable arrests and provides in the Bill of Rights that no arrest, search and seizure can be made without a valid warrant issued by competent judicial authority.^[13] However, it is a settled exception to the rule that an arrest made after an entrapment operation does not require a warrant. Such warrantless arrest is considered reasonable and valid under Rule 113, Section 5(a) of the Revised Rules on Criminal Procedure, which states:

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;

x x x x

In the present case, the arresting officers were justified in arresting Bohol as he had just committed a crime when he sold the *shabu* to PO2 Estrada. A buy-bust operation is a form of entrapment which has repeatedly been accepted to be a valid means of arresting violators of the Dangerous Drugs Law.

Considering the legality of Bohol's warrantless arrest, the subsequent warrantless search that resulted in the seizure of the *shabu* found in his person is likewise valid. In a legitimate warrantless arrest, the arresting police officers are authorized to search and seize from the offender (1) any dangerous weapons and (2) the things which may be used as proof of the commission of the offense.^[14] The constitutional proscription against warrantless searches and seizures admits of certain exceptions. This Court has ruled that the following instances constitute valid warrantless searches and seizures: (1) search incident to a lawful arrest; (2) search of a moving motor vehicle; (3) search in violation of customs laws; (4) seizure of the evidence in plain view; (5) search when the accused himself waives his right against unreasonable searches and seizures; (6) stop and frisk; and (7) exigent and emergency circumstances.^[15]