

SECOND DIVISION

[G.R. NO. 170233, February 22, 2007]

THE PEOPLE OF THE PHILIPPINES, APPELLEE, VS. JESUS NUEVAS Y GARCIA, REYNALDO DIN Y GONZAGA, AND FERNANDO INOCENCIO Y ABADEOS, APPELLANTS.

D E C I S I O N

TINGA, J.:

Jesus Nuevas y Garcia (Nuevas) was charged^[1] before the Regional Trial Court (RTC) of Olongapo City, Branch 75, with illegal possession of marijuana in violation of Section 8, Article II of Republic Act No. 6425^[2] as amended.

Reynaldo Din y Gonzaga (Din) and Fernando Inocencio y Abadeos (Inocencio) were likewise charged^[3] with the same crime, before the same court.

Upon arraignment, Nuevas, Din and Inocencio pleaded not guilty to the charges.^[4] As the evidence in the cases was common and the prosecution would utilize the same witnesses, the cases were consolidated. After a joint trial on the merits, the RTC rendered a Decision^[5] dated 4 April 2002, disposing as follows:

WHEREFORE, finding all accused in the above-entitled cases guilty beyond reasonable doubt, this Court hereby sentences them to suffer the penalty of **Reclusion Perpetua** and each to pay [a] fine of P500,000.00 without subsidiary imprisonment in case of insolvency and to pay the costs.

The bricks of marijuana are hereby confiscated and disposed in accordance with existing regulations.

SO ORDERED.^[6]

To put in appropriate context the operative facts on which adjudication of this case hinges, there is need to recall the factual assertions of the witnesses for both the prosecution and the defense.

PO3 Teofilo B. Fami (Fami) testified that in the morning of 27 September 1997, he and SPO3 Cesar B. Cabling (Cabling) conducted a stationary surveillance and monitoring of illegal drug trafficking along Perimeter Street, Barangay Pag-asa, Olongapo City. They had received information that a certain male person, more or less 5'4" in height, 25 to 30 years old, with a tattoo mark on the upper right hand, and usually wearing a sando and maong pants, would make a delivery of marijuana dried leaves. While stationed thereat, they saw a male person who fit the description, carrying a plastic bag, later identified as Jesus Nuevas (Nuevas), alight from a motor vehicle. They accosted Nuevas and informed him that they are police

officers. Fami asked Nuevas where he was going. Nuevas answered arrogantly but afterwards, calmed down. Nuevas and Fami conversed in the Waray dialect. Nuevas informed him that there were other stuff in the possession of a certain Vangie, an associate, and two other male persons. Later on, Nuevas voluntarily pointed to the police officers a plastic bag which, when opened, contained marijuana dried leaves and bricks wrapped in a blue cloth. Shortly, in his bid to escape charges, Nuevas disclosed where the two (2) other male persons would make the delivery of marijuana weighing more or less five (5) kilos.^[7]

Fami and Cabling, together with Nuevas, then proceeded to Purok 12, Old Cabalan, Olongapo City, which according to Nuevas was where his two (2) companions, Din and Inocencio, could be located. From there, they saw and approached two (2) persons along the National Highway, introducing themselves as police officers. Din was carrying a light blue plastic bag. When asked, Din disclosed that the bag belonged to Nuevas. Fami then took the bag and upon inspection found inside it "marijuana packed in newspaper and wrapped therein."^[8] After confiscating the items, Fami and Cabling brought Nuevas, Din and Inocencio to the police office at Purok III for proper documentation.^[9] Fami further testified that a receipt for the property seized was issued by Cabling and that a field test was duly conducted on the confiscated items. All three accused were likewise physically examined on the basis of which corresponding medical certificates were issued. The corresponding booking sheets and arrest report were also accomplished. Fami stated that he and Cabling executed a joint affidavit in connection with the arrest of all the accused and the confiscation of the items.^[10]

On cross-examination, Fami revealed that when the receipt of evidence seized was prepared, all three (3) accused were not represented by counsel. He likewise disclosed that he was the one who escorted all the accused during their physical examination. He also escorted all three to the Fiscal's office where the latter were informed of the charges against them.^[11]

Cabling corroborated Fami's testimony. He, however, testified that after he and Fami had introduced themselves as police officers, Din and Inocencio voluntarily handed to Fami the marijuana dried leaves.^[12]

On cross-examination, Cabling testified that the arrest of Nuevas was the result of a tip from Fami's informant, conceding though that the name of Nuevas was not included in the list of persons under surveillance. Fami then relayed the tip to Cabling.^[13] Cabling restated that Nuevas had voluntarily submitted the plastic bag he was holding and that after Nuevas had been informed of the violation of law attributed to him, he admitted his willingness to cooperate and point to his other cohorts.^[14] When Fami and Cabling proceeded to the identified location of Nuevas's cohorts, they chanced upon Din and Inocencio along the road. Din was holding a bag while Inocencio was looking into its contents.^[15] Cabling averred that Din voluntarily handed the plastic bag he was holding to the police officers.^[16]

For his defense, Nuevas testified that in the morning of 27 September 1997, he was walking along Perimeter Street, on his way home from the Barangay Hall, when Fami called him. Nuevas approached Fami, who was then in front of his house, and asked why Fami had called him. Fami poked his gun at Nuevas and asked him to go

inside the room where Fami handcuffed Nuevas's hands, got Nuevas's wallet, took out P1,500.00 and put it in his (Fami's) wallet. Fami then confronted Nuevas with shabu use but the latter denied the charge. Before leaving the house with Nuevas, Fami brought out a plastic bag and told Nuevas to carry it. Subsequently, they boarded a red owner-type jeep and proceeded to Station B where Nuevas was put in jail. Nuevas further stated that he did not know Din or Inocencio.^[17]

Din, on the other hand, stated that at about 10 o'clock in the morning of 27 September 1997, while his '*compare*' Inocencio was visiting, two (2) men entered his house looking for a woman. The two (2) introduced themselves as police officers. Then, Din and Inocencio were immediately handcuffed. They were not informed of the reason for their arrest and were told that the reason will be explained to them in court. Next, they were brought to the Cabalan precinct where the investigator asked for their names, and subsequently to Station B where they were ordered to stand up and be photographed with Nuevas, who Din first met in jail. Inside the room where they had their fingerprints taken, he saw marijuana placed on top of the table.^[18]

Inocencio testified that he went to his '*compadre*' Din's house in the morning of 27 September 1997 to sell his fighting cocks as he needed money to redeem his driver's license. While there, he and Din were arrested by two persons, one of whom pointed a gun at them while the other searched the house for a lady named Vangie. Afterwards, he and Din were brought to the Cabalan Police Precinct and then to Station B where he first came to know Nuevas. He denied that a plastic bag containing marijuana was recovered from them and claimed that he only saw such evidence on the day he gave his testimony. He also stated that when a photograph was taken of the three of them, he and Din were ordered to point to a "wrapped thing." When the photograph was taken, they were not assisted by counsel. He also does not recall having signed a receipt of property seized. Afterwards, they were brought to a detention cell. And when they asked the police what they did wrong, the police replied that they will just explain it in court. ^[19]

All three were found guilty as charged and the judgment of conviction was elevated to the Court for automatic review. However, on 14 July 2003, Nuevas filed a manifestation and motion to withdraw appeal.^[20] The Court granted Nuevas's withdrawal of appeal and considered the case closed and terminated as to him, in a Resolution^[21] dated 25 August 2003.

In a Resolution^[22] dated 22 September 2004 of the Court in G.R. Nos. 153641-42, ^[23] the cases were transferred to the Court of Appeals pursuant to the Court's ruling in *People v. Efren Mateo*.^[24]

Before the Court of Appeals, Din and Inocencio (appellants) argued that the trial court erred: (1) in finding them guilty of the crime charged on the basis of the testimonies of the arresting officers; and (2) in not finding that their constitutional rights have been violated.^[25]

The Court of Appeals in a Decision^[26] dated 27 May 2005, in CA-G.R. CR No. 00341, affirmed the decision of the trial court. The dispositive portion of the decision reads:

WHEREFORE, all the foregoing considered, the instant appeal is **DENIED**. The Decision of the Regional Trial Court of Olongapo City, Branch 75, in Criminal Case No. 459-97, is **AFFIRMED**.

SO ORDERED.^[27]

The Court of Appeals restated the rule that when the issue involves the credibility of a witness, the trial court's assessment is entitled to great weight, even finality, unless it is shown that it was tainted with arbitrariness or there was an oversight of some fact or circumstance of weight or influence. The appellate court found Fami and Cabling's version of how appellants were apprehended to be categorical and clear. Din, at the time of his apprehension, was seen holding a plastic bag containing marijuana leaves. On the other hand, Inocencio's possession of the marijuana leaves was established by the fact that he was seen in the act of looking into the plastic bag carried by Din.^[28]

With respect to appellants' claim that their constitutional rights have been violated, the appellate court stated that the search in the instant case is exempted from the requirement of a judicial warrant as appellants themselves waived their right against unreasonable searches and seizures. According to the appellate court, both Cabling and Fami testified that Din voluntarily surrendered the bag. Appellants never presented evidence to rebut the same. Thus, in the instant case, the exclusionary rule does not apply.^[29]

Din and Inocencio are now before the Court submitting for resolution the same matters argued before the Court of Appeals. Through their Manifestation (In Lieu of Supplementary Brief)^[30] dated 22 March 2006, appellants stated that all the arguments necessary to support their acquittal have already been discussed in the brief they had submitted before the appellate court; thus, the filing of a supplemental brief would be a mere reiteration of the arguments discussed in said brief.^[31] The Office of the Solicitor General manifested that it is no longer filing a supplemental brief.^[32]

The conviction or acquittal of appellants rests on the validity of the warrantless searches and seizure made by the police officers and the admissibility of the evidence obtained by virtue thereof.

In holding that the warrantless searches and seizure are valid, the trial court ruled as follows:

While the confiscation of the bricks of marijuana from the accused Jesus Nuevas was without a search warrant, it was not bereft of a probable cause. The police team received informations [sic] from an asset that on that day, a male person whom he sufficiently described will deliver marijuana at the vicinity of Perimeter and Bonifacio S[t]., Pag-asa, Olongapo City, a known drop point of illegal drugs. They went to the said area upon that information. Their waiting was fruitful because not long afterwards they saw the accused Jesus Nuevas alighting from a tricycle carrying a bag and after confronting him, he **voluntarily gave** the bag containing bricks of dried marijuana leaves. With respect to the confiscation of 2 ½ kilos of marijuana and the apprehension of accused

Reynaldo Din and Fernando Inocencio, it was a result of a continued operation by the team which this time was led by accused Nuevas to get some concession from the team for his own earlier apprehension. As the apprehension of Nuevas was upon a probable cause, in the same vein was the apprehension of Reynaldo Din and Fernando Inocencio and the recovery from them [of] 2 ½ kilos of dried marijuana leaves. The propriety of this conclusion is necessity [sic] because of the impossibility of getting first a warrant in so short a time with such cumbersome requirements before one can be issued. Before getting a warrant, the culprits shall have already gone into hiding. These situations are not distant to the case of *People v. Jean Balingan* (G.R. No. 105834, 13 Feb. 1995) where we learned that expediency and practicality are some of the justification[s] in the warrantless arrest.^[33] [Emphasis supplied]

Appellants maintain that there was no basis for their questioning and the subsequent inspection of the plastic bags of Nuevas and Din, as they were not doing anything illegal at the time.^[34]

Our Constitution states that a search and seizure must be carried through or with a judicial warrant; otherwise, such search and seizure becomes "unreasonable" and any evidence obtained therefrom is inadmissible for any purpose in any proceeding.^[35] The constitutional proscription, however, is not absolute but admits of exceptions, namely:

1. *Warrantless search incidental to a lawful arrest.* (Sec. 12, Rule 126 of the Rules of Court and prevailing jurisprudence);
2. *Search of evidence in "plain view."* The elements are: (a) a prior valid intrusion based on the valid warrantless arrest in which the police are legally present in the pursuit of their official duties; (b) the evidence was inadvertently discovered by the police who have the right to be where they are; (c) the evidence must be immediately apparent; (d) "plain view" justified mere seizure of evidence without further search;
3. *Search of a moving vehicle.* Highly regulated by the government, the vehicle's inherent mobility reduces expectation of privacy especially when its transit in public thoroughfares furnishes a highly reasonable suspicion amounting to probable cause that the occupant committed a criminal activity;
4. *Consented warrantless search;*
5. *Customs search;*
6. *Stop and Frisk;* and
7. *Exigent and emergency circumstances.*^[36]

In the instances where a warrant is not necessary to effect a valid search or seizure, or when the latter cannot be performed except without a warrant, what constitutes a reasonable or unreasonable search or seizure is purely a judicial question,